

SUPPORTING SUCCESS: EMPOWERING SMALL BUSINESS ADVOCATES

HEARING BEFORE THE SUBCOMMITTEE ON CONTRACTING AND WORKFORCE OF THE COMMITTEE ON SMALL BUSINESS UNITED STATES HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS FIRST SESSION

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None.	

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WEDNESDAY, DECEMBER 9, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
Washington, DC.

The Subcommittee met, pursuant to call, at 11:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Richard Hanna [chairman of the subcommittee] presiding.

Present: Representatives Hanna, Knight, Kelly, Velázquez, and Chu.

Chairman HANNA. This hearing will come to order.

It has been four years since this Subcommittee held a hearing on the role of small business advocates, although we have spent a lot of effort strengthening these offices. During those four years, we have worked with the Minority to create minimum requirements for each of the small business advocates.

We have added clarity and precision to the roles of the Procurement Center Representatives, PCRs, and the Offices of Small and Disadvantaged Business Utilization, OSDBUs. We have worked to improve the data and systems upon which they rely, and to give them new tools to assist small businesses competing for prime contracts and subcontracts. However, there is still much work to be done.

Unfortunately, the regulations and standard operating procedures in places across the Government have not kept pace with the Small Business Act or the reality of Federal contracting.

What does that mean? First, job descriptions for the business opportunity specialists and commercial market representatives are woefully out of date. Second, PCRs are regulatorily prohibited from looking at many consolidated contracts. Third, OSDBUs are not able to catch agency personnel evading the Small Business Act. Fourth, small contractors are losing opportunities to compete.

Finally, it means that we are not explaining to new contractors that winning an award is only the first hurdle, next, you have to comply with obscure, confusing compliance regulations.

Today, we are here to learn from small businesses and those that work with them how we can ensure that the small business advocates created by the Small Business Act can be more effective.

I especially want to hear suggestions on what Congress can do to alleviate these burdens. I think it is appropriate that we periodically review the efficiency of these programs and make improvements so that the reality of the programs remains true to the spirit

of the Act. I think we have an opportunity to work on these issues in a bipartisan manner.

As we have discussed numerous times this year, we know that we are losing small contractors, and it will be difficult if not impossible to replace these sectors of our technological and industrial base. Supporting the advocates who support small businesses is a crucial element of small business success.

I now yield to the ranking member for her opening statement.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. It is my pleasure to be filling in for Mr. Takai.

Each year, the federal government spends approximately \$440 billion on a variety of goods and services needed for its daily operations. It has been the mission of this committee to ensure that small businesses receive their fair share of dollars generated by these contracting opportunities.

As such, we have provided small businesses with tools to assist them in entering and competing in the federal marketplace as either prime contractors or subcontractors. While their effects were not immediate, these tools have slowly proven the effectiveness in getting results.

Through small business set-aside programs, the dollars awarded to small businesses increased to \$91 billion in 2014, accounting for 25 percent of contracting dollars. In fact, there were also increases in the awards to small business subgroups.

For example, service disabled veteran owned businesses received \$13 billion, and small disadvantaged businesses were awarded \$34 billion.

However, more work is needed to get all small businesses their fair share as the government has failed to meet its goal for women owned small businesses.

Additionally, the mindset of contracting officials needs to be changed so that they see these goals as floor rather than ceiling. It is to that end we must have strong small business advocates placed throughout the acquisition process.

The amount of resources dedicated to these officials would seem to indicate that the Small Business Administration places no importance on the role they play for small businesses.

Procurement center representatives are the first line of advocacy. These officials are tasked with overseeing contracts to determine if it should have been set aside for small businesses or whether it was improperly bundled.

Despite their important function, there are only 49 of these advocates overseeing more than 50 million contracting actions; 49.

What I would like to say, Mr. Chairman, to the committee is the fact that sequestration and budget cuts have consequences. We are here to make sure that we provide a level playing field for small businesses to be able to access the marketplace, the federal marketplace, but in order for the staff at the Small Business Administration to do their job, they need resources.

As a result of the short staffing, PCRs are no longer reviewing actions if there is any kind of set-aside on the contracts. These officials are allowing the bare minimum small business representation, and that is just unacceptable.

Commercial market representatives face staff shortages with only 27 advocates to monitor the subcontracting plans of large prime contractors. Their effectiveness is further diluted as many of them have other responsibilities to perform, taking them away from the CMR role.

The same can be said for business opportunity specialists, who are often pulled by their district offices to help with other small business programs rather than overseeing the 8(a) participants as intended.

Many of the problems with the CMR and BOS advocates are compounded by the fact that neither of these positions are laid out in the statute. Instead, they have been left to develop with SOPs and common practices. This begs one critical question. How can small businesses know what these advocates can do for them if their roles have not been clearly defined?

With 100,000 fewer small business contractors registered to do business with the government than in 2012, and the average contract size increasing because of more bundling, it is more important than ever that actions are taken to reinforce the importance of small business advocates.

I hope that today's hearing will help us gain some insight as to how we can strengthen the role these advocates play in not only assisting small businesses navigate the marketplace but also ensuring these businesses receive their fair share of contracting dollars.

I thank all the witnesses for being here today, and I yield back the balance of my time.

Chairman HANNA. Thank you. If additional members have opening statements prepared, I ask that they submit them for the record.

Thank you all for being here. In a moment I will introduce you individually, but so you understand the timing, you have five minutes. When it turns red, you have one, but we want to hear what you have to say, so do not sweat the program too much.

We have one panel today. Our first witness is Angela Styles, Chair and Partner at Crowell & Moring. She is testifying on behalf of the Defense Industry Initiative on Business Ethics and Conduct, a non-profit organization dedicated to a culture and practice of ethics and integrity in all business dealings with the Department of Defense.

Our second witness is Davy Leghorn, the Assistant Director of the National Veterans Employment and Education Division at the American Legion. The Legion is the largest wartime veterans service organization. Thank you.

Our third witness is Ms. ML Mackey, CEO of Beacon Interactive Systems, a successful SBIR contractor. She is testifying on behalf of the National Defense Industrial Association.

I now yield to the ranking member to introduce our last witness.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. It is my pleasure to introduce Ms. Tracy Balazs, the Founder, President, and CEO of Federal Staffing Resources. FSR is a woman-owned minority business located in Annapolis, Maryland, with over 11 years of experience, the business also successfully graduated from SBA's 8(a)

business development program, and now serves as a mentor in the program.

Ms. Balazs is also here testifying on behalf of the US Pan Asian American Chamber of Commerce, whose goal is to open doors for Asian American minority businesses and their business partners in corporate America, in federal, state, and local governments. Welcome.

Chairman HANNA. Thank you. Ms. Styles?

STATEMENTS OF ANGELA B. STYLES, CHAIR AND PARTNER, CROWELL & MORING; DAVY G. LEGHORN, ASSISTANT DIRECTOR, NATIONAL VETERANS EMPLOYMENT AND EDUCATION DIVISION, THE AMERICAN LEGION; ML MACKEY, CHIEF EXECUTIVE OFFICER, BEACON INTERACTIVE SYSTEMS; TRACY BALAZS, FOUNDER, PRESIDENT, AND CHIEF EXECUTIVE OFFICER OF FEDERAL STAFFING RESOURCES

STATEMENT OF ANGELA B. STYLES

Ms. STYLES. Thank you very much, Chairman Hanna, Congresswoman Velázquez, and members of the Subcommittee. I appreciate the opportunity to appear before you today as the coordinator of the Defense Industry Initiative on Business Ethics and Conduct, or DII, to discuss ways to empower small businesses to comply with the many, many requirements of the Federal marketplace.

DII is a non-partisan and non-profit 501(c)(3) association of U.S. defense companies who are committed to a culture and practice of ethics and integrity.

In 1986, the chief executive officers and senior officials of 18 defense contractors, who were led by Jack Welch from General Electric, voluntarily met and created DII and drafted self governance principles. Today, 76 defense contractors including both small and large businesses, are signatories to the DII self governance principles.

As part of its mission, DII provides the resources and assistance to help train hundreds of thousands of defense industry employees in ethics and compliance.

In an ideal world, all businesses that participate in the Federal marketplace would have the wherewithal to understand and comply with all of the obligations that go hand in hand with Federal contracting. Unfortunately, this is not an ideal world.

The scope and complexity of the regulations faced by contractors challenge are enough to regularly challenge even the largest companies with robust ethics and compliance programs. With less resources, measured by both money and manpower, and less experience with Government contracting, the hurdles faced by small businesses are monumental.

As a result, the Federal Government is undoubtedly contracting with small businesses that do not know the full extent of the laws, regulations, or provisions required for Federal contracting. Some are not monitoring their compliance with these requirements, and some have no process to voluntarily disclose violations to appropriate authorities.

Although there are numerous Federal agencies, centers, and offices that work with small businesses engaged in Federal contracting, DII has extensively searched—when I say extensively, we have done web searches, we have made phone calls, we have had meetings with all different levels of Government officials, we have not found Federal Government resources that provide guidance to small businesses to aid in the adoption of codes of conduct or the establishment of broader compliance in ethics programs for small businesses.

Because the Federal resources for small businesses seem to be woefully lacking in the Federal Government, DII itself recently undertook several significant initiatives to provide ethics and compliance resources to small business contractors.

In 2014, we published a model Code of Conduct for suppliers, and I have provided that as Attachment C to the Committee. We also have on our website a supplier toolkit that is available for small businesses and all businesses as well.

Following the publication of both our Supplier Code of Conduct and our toolkit, we were making our way around to different suspension and debarment officials at the Department of Defense, and they kept telling us it really was not enough, that they really wanted to see if the private sector could help with ethics and compliance programming for small businesses.

One thing they do not want to do is suspend or debar small businesses because they did not have the resources or the ability to understand how to comply with the laws and the regulations.

As a result of those meetings, DII has committed to provide additional resources to small businesses that are Federal contractors, both prime and subcontractors.

To that end, at the specific request of the Army Suspension and Debarment Office, we actually put up training for small businesses on our website, but that is just the first step. We have a webinar available. I have provided the slides of that webinar. Even you can get on and take a look at what we provided.

They told us how important it was to have some basic training about small business programs up and available, so we put together that training, we put it up on our website, but we are not stopping there.

This spring, we are going to launch a very robust small business toolkit, which includes structure and organization of a compliance program, some materials so they can build their own compliance program.

We are going to have specific codes of conduct, policies and procedures for small businesses to be able to literally lift out of our website and use at their companies.

We are making sample training videos for them to be able to train their employees on critical ethics and compliance issues in Federal contracting, and we are also going to provide them with templates on how to monitor and audit your own compliance program.

We are very hopeful that these with a mentor-protégé program that we are putting together for a list of mentors that are available within DII to assist, take phone calls, answer questions from small businesses. We hope this will actually help.

I will tell you this cannot just be the private sector alone. While DII and many of the defense contractors are very committed to making resources available, we really want this effort, this education and training effort, to be done in coordination with the Department of Defense and with our Small Business Administration colleagues.

It takes both the public and private sectors, I think, to ensure that small businesses have the resources and tools to wisely, legally, and ethically perform Federal contracts.

This concludes my prepared response, but I do want to thank one of my colleagues for assisting me with this testimony. She is here today, Olivia Lynch, with my office.

There are very few, aside from your counsel that have here on the Committee, people that actually understand small business statutes and regulations and how difficult this is, but I can tell you Ms. Lynch, who helped me with the testimony, and certainly the counsel you have on your Committee, are certainly some of the leading experts around.

Thank you very much.

Chairman HANNA. Thank you. Mr. Leghorn?

STATEMENT OF DAVY G. LEGHORN

Mr. LEGHORN. Good morning, Chairman Hanna, Ranking Member Velázquez, and members of the Subcommittee. On behalf of our National Commander, Dale Barnett, and 2.3 million members of the American Legion, we thank you for this opportunity to testify at this hearing.

In the midst of obstacles for veteran entrepreneurs seeking Federal contracts and the VA purchase card scandal, the American Legion recognizes the need to empower the Small Business Administration and the offices of small and disadvantaged business utilization to hold the Federal agencies accountable.

Our Government has a fiduciary responsibility to not circumvent the procurement process with questionable shortcuts. The American Legion can appreciate that VA misused purchase cards in fulfilling their duties to provide adequate care to veterans, but we are concerned that this deliberate undermining of the procurement process is putting our veterans at risk.

This issue is paramount to the American Legion as it directly affects the care of a vulnerable segment of the veterans' population. Federal contracts protect veteran patients with terms and conditions and hold medical suppliers or health care administrators accountable.

None of these protections are in place when equipment and services are acquired outside of the procurement process. Never mind that VA is likely being overcharged or that the abuse of purchase cards is unfair to small businesses. This is foremost a safety concern that needs to be addressed.

The American Legion believes that VA contracting officials misused purchase cards because of short staffing and bad training. We would like to believe that the perpetuated culture of foiling the procurement process is unintentional. With that in mind, there are measures that VA can implement to ensure that our veteran pa-

tients are safe and all purchases that are set aside for small businesses remain reserved for small businesses.

VA OSDBU must train and re-train contracting employees. VA should hire additional staff to write and oversee contracts in order to decrease the existing workload. VA must account for purchase card expenditures and they must start recording it in a database like that of the FTPS.

Another issue harmful to veteran small businesses is the Federal Strategic Sourcing Initiative. The American Legion has never thought that the FSSI was good for small business. While this initiative streamlines Government procurements, it is flawed in that it drastically reduces competition for Government spending.

As we mention in our written testimony, with the latest generation of FSSI, the bidding process is burdensome and cost prohibitive to small businesses. Further, it is equally frustrating to sell to an agency despite having been identified as a small business prime under the FSSI.

We have come to terms that this generation of FSSI is here to stay, so the American Legion would like to make a few recommendations to ensure that at least a few of our veteran small businesses can benefit.

Procurement center representatives are supposed to be our advocates. They ensure a fair portion of contracts and subcontracts are allocated to small business. Unfortunately, there are simply not enough PCRs to review every contract for compliance, and PCRs do not review outgoing FSSI delivery orders.

The contracts under the FSSI are so large that the American Legion believes that it will be of benefit to the small business community if PCRs are required to review outgoing FSSI contracts.

The American Legion goes a step further and recommends an SBA budget increase for the hiring of more PCRs.

Over the years, procurement initiatives and tools like the FSSI reverse auctions and large IDIQ contracts were all partially aimed at alleviating the workload of contracting employees. A case can be made that these initiatives and tools are not working because contracting employees are still looking for shortcuts.

There is a need for additional competent Federal personnel to write, oversee, and monitor contracts because much of the frustrations our veteran entrepreneurs have stem from a lack of well trained procurement staff.

The American Legion does not believe that Federal employees intentionally put veteran patients in danger or are maliciously suppressing the veteran small business industrial base with bad policy. They just need the requisite training and manpower to do the job correctly and be the advocates for small business that they were intended to be.

In closing, the American Legion thanks this Committee for the opportunity to testify today, and we look forward to any questions you may have.

Chairman HANNA. Thank you. Ms. Mackey?

STATEMENT OF ML MACKEY

Ms. MACKEY. Good morning, Chairman Hanna, Ranking Member Velázquez, and members of the Subcommittee. My name is ML

Mackey, and I am the CEO of Beacon Interactive Systems, a small business with offices located in Waltham, Massachusetts and in Norfolk, Virginia.

I am also the Legislative Affairs and Policy Committee Chair for the Small Business Division of the National Defense Industrial Association, NDIA.

In each of those roles, my motivation is the same, to utilize small business effectively to increase innovation, cost savings, and competition in the Federal acquisition ecosystem.

Chairman Hanna, Ranking Member Velázquez, I appreciate your leadership and the efforts of your Subcommittee taking the form of your obvious interest in and commitment to leveling the playing field for small businesses to compete in the Federal marketplace and the many pieces of legislation you have authored and passed to that end.

My role at NDIA places me in regular discussions of small business legislation. The overwhelming response of my colleagues to your efforts and your Committee's efforts is sincere appreciation, so please let me begin by saying thank you.

As I said, this Subcommittee has demonstrated a deep commitment to leveling the playing field for small business. This concept is important to today's discussion because if one accepts that small business has a lot to offer and that in many cases small business is where innovation occurs, what we are all fighting for makes sense, this level playing field. Your efforts make it possible for the best, not just the biggest to rise to the top.

The goal of your efforts is not to make it easy on small business, and it is not, but rather to ensure that we have a diverse industry that supplies the Government with the very best goods and services possible at the best possible price.

Unfortunately, the level playing field is as difficult to create as it is important to maintain for the well being of the Government contracting ecosystem.

Fortunately for those of us that advocate for small business interests, we have strong advocates like this Committee. Your efforts in the recent legislation regarding small business Federal contracting in the fiscal year 2016 NDAA demonstrate once again that small business can depend on Congress to work for a fair and healthy acquisition system.

Of course, new legislation is just the beginning of this process. Each one of your provisions must be written into clear regulations and policies that each agency can implement. Next, the Congress, the Small Business Administration, and each agency must oversee the implementation of these regulations and policies to be sure they are followed.

With that in mind, what I can offer today is some feedback from my experience in my own company as well as some of my NDIA colleagues' experiences with their small businesses.

I make five recommendations in my prepared testimony, but in the interest of time, I will read only two of them here today and submit the others for the record.

The first one I want to discuss with you is the lack of PCR involvement in consolidated contracts. This limits small business participation. We suggest that PCRs should actively advise on consoli-

dated contracts, inviting PCRs to advise on a consolidated acquisition strategy will help better identify those requirements where small businesses can best perform, and help structure the solicitation such that more small businesses can compete.

Over the recent decade, the Federal Government has seen widespread and far reaching changes in the way it procures services and technology. There has been significant growth of consolidated contracts. Although this has helped the Government cope with the reduction on the acquisition workforce through fewer contracts, it tends to bundle requirements that are out of reach of most small businesses.

For example, technology contracts are generally the result of consolidating multiple discipline requirements into a single solicitation for large business team competition. Empowering PCRs to advise on consolidated contracts will help to ensure that the requirements are within the reach of small business.

The impact will be increase small business participation and competition resulting in more cost effective and innovative solutions for our warfighter.

The second problem I will speak to is post-award compliance. The Government has created barriers to entry in the Federal market and thus, is not getting all the companies participating that it would like to have. Many entrepreneurial small business owners do not want to deal with the compliance headache and risk of engaging with the Federal Government.

To be clear, Beacon became a Federal Government contractor when after 10 years of running a successful private sector software company and in the wake of the tech bubble burst, our market dried up. We engaged with the Navy's SBIR program to accomplish a pivot into the Federal market.

Once we got through the initial burden of understanding some of the Federal contracting compliance issues, it has wound up being a net positive experience both for our company and our Federal customers, but overcoming the barriers was really hard at first. Honestly, it still is at times.

I suggest we develop paths and provide resources for non-traditional entrepreneurial small businesses to drive the innovation, cost effectiveness, and improve competition so desperately needed in Federal procurement.

The impact would be increased small business participation and improved quality across the board, not just on the high quality of what these entrepreneurial small businesses will directly provide, but also by the competition they will incite across the Government supplier base.

Mr. Chairman, on behalf of both the National Defense Industrial Association and myself, I hope that these suggestions will be useful in your ongoing work.

I would like to thank you and the Committee for your leadership, and I would be pleased to respond to any of your questions.

Chairman HANNA. Thank you. Ms. Balazs?

STATEMENT OF TRACY BALAZS

Ms. BALAZS. Good morning, Chairman Hanna, and Ranking Member Velázquez, and members of the Subcommittee. Thank you

for this opportunity to provide testimony regarding my personal experiences as a woman owned small business owner who has graduated from the SBA 8(a) program, and is now an approved SBA mentor.

My name is Tracy Balazs. I am the Founder, President, and Chief Executive Officer of Federal Staffing Resources, also known as FSR. I am also a retired registered nurse.

I am testifying today on behalf of FSR regarding the advocacy and support of small business representatives from the following departments that I have had experience: 8(a) Business Development Program—Business Opportunity Specialists, BOS, the Procurement Center Representatives, PCRs, and the Office of Small and Disadvantaged Small Business Utilization, OSDBU.

As a member of the US Pan Asian American Chamber of Commerce, an organization whose mission is to be the gateway to corporate and Government contracts, while opening doors and making connections for the Asian American minority businesses and their partners, I am grateful for their recommendation that FSR should provide testimony today.

Federal Staffing Resources is a successful business with 250 employees, in large part due to the programs, the guidance, and the support provided by the SBA.

FSR has been a Federal contractor since its inception in February 2004. Our core competency has been in support of those who have sacrificed for our freedoms—the active duty men and women and the veterans of the U.S. Armed Forces, by providing the best in class health care personnel and program management expertise to the Department of Defense and the Veterans Health Administration.

We strongly believe that the SBA has given FSR the opportunity to provide these services to the best of our ability by giving us support we needed.

The 8(a) program was crucial to our early survival in business. My experiences have been extremely positive, and FSR has benefitted greatly from the 8(a) certification. It has not been without challenges, however, since the compliance requirements of 8(a) certified companies are rigorous.

The Government contracting process is complex and confusing. Most small businesses do not have the time or the money it takes to fully understand how to succeed as a Government contractor. The SBA provides essential guidance to business owners.

One issue that I had encountered while I was working with the SBA is the interpretation and implementation of standardized policies and procedures. They are handed down from headquarters to the regional offices, the district offices, and finally to the individual SBA representatives.

Even within the same office but mostly across state lines and districts, interpretations of policies may differ. I have had conflicting experiences regarding how the SBA reviews its financial eligibility and size standards and how it applies this criteria to award or to deny contracts.

Some guidance is misleading, conflicting, and misinterpreted, which can result in inappropriate action, such as improper awards.

Increased training for the representatives as well as inviting industry to offer their experiences may help mitigate confusion, and ensure uniform compliance. Non-compliance and lack of attention to the rules may be potentially fatal for a small business.

Even from the beginning, I knew that the relevant statutes and regulations must be respected and never ignored. We take compliance very seriously, and so much so that FSR has a Director of Compliance.

Since the 8(a) program is highly regimented, certified 8(a) contractors are under greater scrutiny for compliance than any other small businesses that do not have a certifying body mandating an annual update of their business or financials.

FSR is a mentor in the 8(a) Mentor-Protégé program. It is part of our duty to educate our protégé and make them aware of the pitfalls of non-compliance.

The SBA helped us grow our business pipeline and our business network. The OSDBUs and the PCRs were essential in creating opportunities for the past decade. The OSDBUs work closely with the SBA and small businesses to ensure that we are aware of Federal opportunities and that we are aware of the growing statutes and regulations.

The two areas that the PCRs may have a direct impact on small businesses is to make recommendation for small business set-asides and to review the subcontracting plans and goals of large businesses.

The monitoring of the small business subcontracting plans may merit review. The concern is that large businesses are not being fully assessed for compliance in the percentage of small business utilization, as specified in their contract.

I understand from speaking to several OSDBUs and PCRs that the large businesses are expected to meet their small business subcontracting goals. However, due to insufficient numbers of Government personnel, they are unable to police all the plans. Therefore, these percentages are reported only by large businesses, and without verification from the subcontractor small businesses.

The Government receiving a report on subcontracting revenue directly from small businesses so may themselves verify this objective has been met.

In closing, I would like to acknowledge the SBA program and their personnel for assistance in helping me achieve business success.

Chairman Hanna and Ranking Member Velázquez, members of the Subcommittee, thank you very much for this opportunity. FSR hopes that our contributions and personal experiences may impact the way the SBA interacts with small businesses in monitoring and educating to ensure more compliance.

Thank you very much. I am available for questions.

Chairman HANNA. Thank you. There is a theme here, and that is that the SBA is shorthanded, which makes me wonder, they offered a buyout program last year to PCRs and CMRs, and 15 people retired.

Ms. Styles, a couple of things. How does DII develop training on issues like limitations on subcontracting when the SBA and the FAR have not issued its own final rules, and could you give me

some examples of the types of ethical issues that people are confronting that might not seem obvious?

Ms. STYLES. The rules, as you know, are quite complicated. The statutes governing Federal contracting and the regulations governing Federal contracting are complicated even for the largest of defense contractors in our country.

I can tell you what makes it even worse is when a new statute comes out and the regulations are not updated to reflect the new statute, so the regulations are incorporated into the contractor's contract, so you sign on the bottom line and it becomes part of your contract, so you have to comply with the regulation that says one thing for limitation on subcontracting, but then there is also a statute out there that you also must comply with that says something else on the limitation on subcontracting. The best that we can advise our clients is that they have to figure out how to follow both.

Chairman HANNA. They may not be in the same document. They could be completely separate and maybe even unavailable at the time?

Ms. STYLES. Are we really anticipating small businesses to read legislation, statutes that pass? They rely on the contract. They rely on the Federal acquisition regulations. It is really hard to also expect them to go scour through the statutes to figure out what they are supposed to be doing in particular instances. It is very, very difficult.

I will say even some of the simplest issues are hard to understand. Federal contracting is not commercial contracting. You cannot take Government employees out to lunch. You have to follow the specific terms and conditions of your contract. You cannot sell products that are made in China.

There are things that are just really, really different that are easy to get tripped up on, and we see it every day. We see it every day with small businesses.

Chairman HANNA. To anybody, what kind of implications does this have on bundling? Obviously, there is an incentive to do that. I had asked you what kind of ethical issues you might be confronted with that might not seem obvious. You said you had made a couple of examples.

Ms. STYLES. Well, even the simplest things like pricing, certified cost and pricing information, where products have to be manufactured that are supplied to the U.S. Government. Simple gifts and gratuity rules. There are like pages and pages of gift and gratuity rules, not just for Federal employees, but also in terms of what would constitute what you can do with your suppliers as well.

It is easy to get tripped up on——

Chairman HANNA. Would you say that it is almost impossible to follow, that anybody can make a mistake, and it depends on who is watching when that mistake is made?

Ms. STYLES. Yes, even the largest companies make mistakes, and they have a lot of resources to comply and to put ethics and compliance programs in place.

Chairman HANNA. Anyone else want to speak on that?

Ms. BALAZS. I think it is easy to make a mistake. However, it is on the onus of the small business who is going to be working in

the Federal space to be updated on the regulations. This is required on the 8(a) certification.

You have to make sure that you comply with the terms of your contract. Therefore, you as a business owner has to do some homework. You have to be aware of what is going on and what you have to do while working in the Federal space.

If the opportunity were there to be able to have our representatives to be able to support us and educate us and remind us that we have compliances to meet, I think that would help us, instead of just allowing the small businesses to figure it out for themselves.

Chairman HANNA. Thank you. Ms. Velázquez?

Ms. VELAZQUEZ. Thank you. Ms. Styles, one of the main factors in staying active in the marketplace is to remain compliant. Can you help me understand why there is so little emphasis put into that?

Ms. STYLES. I do not know why. I think a lot of the emphasis has been put on getting the contracts to the small businesses, which is great, right. We want our small businesses to get a good share of Federal contracts.

I think the emphasis was put there to the exclusion of what happens once you get the contract, how you perform, how you follow the laws and regulations.

Ms. VELAZQUEZ. How is it that DII does not find any government source that provides guidance on small business compliance?

Ms. STYLES. We were really surprised when we started looking and realized what a big problem it was starting to become, at least from what we were hearing from our Government colleagues in terms of their concerns about whether the small business suppliers they were relying on, that provided good products and services, did not have a compliance program.

We were getting tripped up in different areas, so that is why we started looking.

Ms. VELAZQUEZ. Thank you. Ms. Balazs, you noted in your testimony that you have a Director of Compliance. This is not a step that has been taken by small businesses. Why do you choose to make this investment, and what kind of assistance did you seek when creating your program?

Ms. BALAZS. So, I chose to make this investment because we wanted to be 100 percent compliant, and we did not want to risk being disbarred or suspended. The 8(a) certification is precious. You work hard to get it. You work hard to maintain it. Although there are many companies that feel they will not get caught, it is a risk that you take if you are not in compliance.

We chose to be able to assign someone in our organization to be Director of Compliance. She is self taught. She has years of Government experience, and has had a great deal of resources that she has obtained through classes or seminars provided by the SBA and other agencies, et cetera.

It really keeps our feet to the fire, to be able to make sure that if we are going to be working and competing in the Government space that we are going to do exactly what the Government tells us to do.

Ms. VELÁZQUEZ. Would something like the tools that Ms. Styles mentioned have been helpful to you?

Ms. BALAZS. Absolutely. If we had those resources at hand, we certainly would not have had to go and find them and seek them out. We did not get the assistance from the SBA. When we got our 8(a) certification, it was just an understood thing that we would be compliant, although there was nothing that we were given in terms of a handbook on how to do it, what is the FAR, how do we read the FAR. Your toolkit would be absolutely great for any business but essentially those are going into the Federal space.

Ms. VELAZQUEZ. It is great that now you provide compliance assistance to your protégé. Did you find that other entities were lacking in terms of providing counseling to small businesses?

Ms. BALAZS. I believe so. I think it is really focused on getting contracts, networking who you meet, who are the buyers, who are the acquisition teams. It is not really focused on after award and what is expected of the small business or the large business.

Ms. VELAZQUEZ. Thank you, Ms. Balazs. Ms. Styles, other than money and manpower, what have you found to be the biggest obstacle in creating a compliance program?

Ms. STYLES. It is the culture of the company. It has everything to do with the people who are leading the company. They have to embrace it and they have to understand it, and just like Ms. Balazs over here, that is exactly what you want. You want a company that says if I am taking Federal dollars and I am performing a service, I am going to do it right.

Ms. VELAZQUEZ. Do you have an estimate on how much a basic compliance program would cost?

Ms. STYLES. It is not inexpensive. You have to have a person at least partially committed to it. I would say at least \$100,000 to put the very, very basics in place.

Ms. VELAZQUEZ. I have other questions for the other two witnesses on the second round, because we have other members here.

Mr. Leghorn, earlier this year we held a hearing on the alleged fraud and abuse of government purchase cards by the Department of Veterans Affairs. You spoke at that hearing, but yet veterans' groups have yet to testify before the committee on this issue.

Can you discuss further how this type of fraud has affected the veteran small business community?

Mr. LEGHORN. Thank you for your question, ma'am. So, the way it affects veteran owned small businesses is that first of all, the small business goal and percentages that are reported by VA OSDBU come from—are taken from data from FDPS.

Since purchase card expenditures are not reported in FDPS, the percentage that they actually report to the SBA is false.

We do not think this is something that is completely just only relegated to VA, we think other agencies have violated the purchase card rules as well.

Overall, it could be that more than one agency is reporting false small business percentages to the SBA, and the SBA does not really have any teeth to go after the agencies when discrepancies are found.

Ms. VELÁZQUEZ. How can we get acquisition officials to stop trying to shortcut the contracting process?

Mr. LEGHORN. I think the best thing we could do is to leverage the OSDBUs within all the agencies and rely on them to really

train their contracting employees to use regular procurement vehicles or if things need to be expedited, to use maybe their sole source authority, but most importantly, they have to start reporting their purchase card expenditures.

Ms. VELAZQUEZ. Thank you. Ms. Mackey, the committee often hears from small businesses that they do not know the role of certain advocates or know how to properly utilize them as resources. In some cases, they do not even know the advocate exists.

What can be done to clarify these roles and ensure that small businesses know about both the advocates and resources available to them?

Ms. MACKEY. I would tell you that when I first found out about PCRs, I thought oh, wow, what a great role. I was really excited to have them get engaged in some of the contracting discussions we were having, and then I realized how few there were and how stretched thin they were, and how they did not know the particulars, specifically of the SBI contracting we were doing. It was like this promise that just went passing by.

I am very encouraged that we are talking about increasing those resources. I also would suggest that you reach out through the industry associations. What keeps striking me about the answers that I hear from my fellow panelists is this ability to initiate or do training.

Ms. Styles, you talked about changing it from the top down. I think if you really want to change behavior, you want to have this kind of compliance, you need a continuous maintenance of your operational procedures and how you act, and so many of us as small business owners find education in our industry associations. I would recommend to you that you reach out through the industry associations.

Ms. VELAZQUEZ. Thank you. Thank you, Mr. Chairman.

Chairman HANNA. Thank you. Mr. Kelly?

Mr. KELLY. Yes. Mr. Leghorn, first, I want to thank you for your service in the American Legion and obviously before that. As a member of the American Legion, that is very important to me.

You know that the procurement center representatives, PCRs, are supposed to be the small businesses' advocates, ensuring a fair proportion of purchases, contracts and subcontracts that are allocated to small businesses.

Can you explain why the SBA would have a regulation that keeps its procurement center representatives from reviewing some of the largest contracting opportunities for small businesses? By this, I mean contracts awarded as part of the FSSI and other consolidated multiple award contracts.

Mr. LEGHORN. Thank you for your question, sir. PCRs only look at contracts that are above a certain dollar amount, because there simply are not enough of them to look at every outgoing contract. With some of the contracts that go out, the orders that go out under the FSSI, they already have a small business component built into them.

For example, if you had seven primes that are designated, three of them could be small businesses, and four of them could be large businesses, and they are not obligated to look at them because small business is already built in.

Mr. KELLY. Ms. Mackey, you are welcome to comment as well.

Ms. MACKEY. I am not sure that I could comment too much more than that except to add in that it is really important to articulate and discretely break up the kind of work that needs to be done, and make sure we keep all the opportunities open. I really appreciate what you had to say on that.

Mr. KELLY. Mr. Leghorn, you know from your view there are not enough PCRs to keep up with the expedient review of every contract for compliance. In an ever increasingly difficult budget environment, outside of hiring additional PCRs, are there other steps that could be taken to modernize or create effectiveness within the PCR role?

Mr. LEGHORN. Sir, I think a really good start, if we are not going to hire any more PCRs, is to just have PCRs start looking at FSSI contracts, because those contracts that are going out are so large, there are actually very few small businesses attached to these contracts.

I am pretty sure if any competent PCR looks at them, they could find other small businesses to break out contracts for.

Mr. KELLY. Is there any other member of the panel that would like to comment on that?

Ms. BALAZS. Would it be okay if I added something to that? When I think about PCRs reviewing the consolidated contracts, the thing I think I can offer is a perspective on what the small business owner experiences, perhaps we both can offer that.

If you think about how long it takes to prepare, if you can qualify, to propose on one of those, some of our colleagues have told us that it takes half a man year to write one of those proposals.

If you have a small business, it is 20 people, and they are writing one of these proposals, where they might get work and they might not, that is half a year, that is five percent of my workforce, let's say I am a 20 person company. Often, the profit, the fee, that I can charge on a contract is five or six percent.

It becomes unreasonable to think even when there are these kinds of contracts that small business can go after, that most of your small businesses will not. I think I am again emphasizing your points, but I did want to give that context.

Mr. KELLY. Mr. Chairman, I yield back.

Chairman HANNA. Thank you. It is worth noting that Mr. Kelly will be introducing a bill to ensure PCRs can review consolidated contracts, so this bill was written with the ranking member's staff.

Ms. Styles, how unusual is it that a company would have what Ms. Balazs has? Clearly, you have reached a critical mass to do what you have done. Is it unusual?

Ms. STYLES. Very unusual for a company that size or a small business to have a chief compliance officer or head of compliance.

Chairman HANNA. It makes a big difference?

Ms. STYLES. Huge difference.

Chairman HANNA. But extremely rare?

Ms. STYLES. Very rare because it is a person, and you have to pay.

Chairman HANNA. It is expensive?

Ms. STYLES. Yes.

Chairman HANNA. That only emphasizes again what you do, the importance of what you do, and the importance of PCRs in general. Amazing.

How much of an impetus do you think this has towards moving to bundling and more consolidation, hence, as Ms. Mackey said, the difficulties associated with getting contracts in general? To anybody who would like to comment.

We have seen the loss of 100,000 businesses; right? That is pretty severe.

Ms. BALAZS. If I may, bundling creates a situation where the cost and the volume of all the contracts are so large that small businesses generally are not able to support that volume. However, I have heard through speaking with some OSDBUs and understanding through small businesses that there could be a tiered system in which when you look at the size for small businesses, the largest size standard currently is \$38 million. That is a three year average.

Anybody who is within that could be considered a small business, but that is a hospital standard size, for those who are in health care, this is a size that we bid under.

I believe the largest size for research and development is 500 person. We are at 250, but we are still a small business. As we continue, we will outgrow that size, but could still be a small business depending on the types of personnel we support.

I believe the largest size for temporary services is \$27.5 million, and the IT services is like \$25 million.

If there were an opportunity to look at these contracts that are coming out as a bundled contract, to be able to say okay, if there are small businesses in the mid-tier area that may be above these sizes, that they can come together possibly and be able to work on some of these contracts if it was offered to them. Right now, it is even full and open for billion dollar companies or small.

If you do not have enough small's that can say they can do it, along with their teaming partners, it will always go full and open for these bundled contracts.

Chairman HANNA. Do you agree with that?

Ms. STYLES. Yes, I definitely agree with that. I would say just on the bundling piece, I am seeing some recognition at the Department of Defense that at least on the compliance side, it does not really solve the problem, because the small businesses, if you bundle, many of these small businesses end up being in the supply chain, right.

Whether they are a prime and bidding or whether they are in the supply chain, we have to fix these problems with compliance.

I do think at least in some sense, there is a recognition at the Department of Defense that it is not the solution that maybe they thought it was, not that it does not make their life easier, right, to bundle things and just have one company.

Chairman HANNA. One tends to think of bundling from the top down, but what Ms. Balazs is suggesting is from the bottom up, which is different than frankly I had thought about it before.

Ms. Velázquez?

Ms. VELAZQUEZ. Yes, I have another question. Ms. Balazs, in your testimony, you talked about the lack of standardization of

SBA policies that could lead to inappropriate actions on the part of small businesses.

I would like to hear from your own experience, do small businesses usually rely on the business opportunity specialists to steer them in the right direction?

Ms. BALAZS. The business opportunity specialists, ma'am, are really assigned to those certified companies that are in the 8(a) program. They are very specialized in supporting those 8(a) contractors.

I have two examples of misinterpretation of some of the statutes and some of the policies. It comes down to the financial eligibility of small businesses on sole source. This is just an experience that I have had, and in talking with my contemporaries, that they may not have realized the same experience.

When a sole source opportunity is approved and granted to an 8(a) company, the contracting officer must double check with the BOS to make sure that person, that company, is viable, that they are eligible, and they are able to support.

There is a financial aspect of that where they will ask the 8(a) company to present their tax returns to make sure they are within the size standards to receive that sole source award. Usually, it is based on the tax returns.

Unfortunately, from my experience, and this is where I am saying interpretation is different amongst the BOSs—my BOS was extremely dedicated to her job, she was extremely by the book. I am not sure if this particular rationale is part of policy, but she asked for interim financials, a moment in time of what my financials are today before I can be awarded a sole source.

If we are a growing company, that is ever changing, and hopefully it is growing. It is not based on the tax returns of the previous year. Therefore, I have been denied sole source contracts because we have reached a threshold during that growth period.

Other SBA BOSs have not asked for interim. It is a surprise to them that we would be asked for interim financials.

Ms. VELAZQUEZ. Let me ask you, do you see the fact that there is a lack of direct BOS oversight from headquarters a contributing factor to the lack of standardization, for example?

Ms. BALAZS. I do not believe that is 100 percent true. I think it is just understanding the statutes and the policies and the rules and how they interpret them and express it to their 8(a) organizations.

I think what is there is a statute, and maybe they are just misrepresenting in the way they are explaining that to an organization, and I am seeing that it happens within the same organization, same office, as well as across state lines where other businesses are.

As a mentor, I am working with a BOS that is in another state. My protégé is in another state. Therefore, some of the things they have said to us is a little bit different than the instructions and guidance I had received as an 8(a) certified company.

Ms. VELAZQUEZ. Thank you. Thank you, Mr. Chairman.

Chairman HANNA. Thank you. Implicit in that is there is some arbitrary and capricious opportunities because of the complexity, and the lady you talked to who wanted you to do interim finan-

cials, that is a lot of work and a lot of expense, and you thought it was not required, but you had no choice.

Ms. BALAZS. I had no choice. I had to provide—the one other aspect, if I may, is audited financials. The 8(a) requires a company who is over \$10 million and is a certified 8(a) to have audited financials. Audited financials are extremely expensive. That is mandatory for you to sustain your 8(a) certification.

Most small businesses do not have that requirement to have audited financials, but it is important to make sure that company is sustainable. I have spoken with 8(a) companies that have never been requested to have audited financials, and in the entire nine years of my term in the 8(a) program, it cost me about \$30,000 a year to have audited financials, and then I am working against other organizations who do not have audited financials.

Chairman HANNA. If someone says to you you need it as of yesterday, then basically that \$30,000 you spent for year-end does not even help you.

Ms. BALAZS. Correct. It was not an issue that we had to provide audited financials because we are compliant, we do what we are told. There was no issue with that, although I found it rather expensive, but it was the fact that it was not standardized across all the BOS offices.

Chairman HANNA. Thank you very much. Those FSSI contracts displaced 500 plus small businesses in exchange for a handful of small businesses. In one case, we went from 1,000 small businesses regularly competing to only 30. This is something that the PCRs should review.

If there are no further questions, I want to thank everybody for being here today, and for your ideas for solving some of these problems and potential solutions.

It seems that some common sense reforms to PCR, OSDDBU, BOS, and CMR programs would go a long way to helping our small businesses compete. I look forward to working with my colleagues, and there are a number of ideas on this Committee, along with one we have heard from Mr. Kelly.

I ask unanimous consent that the members have five legislative days to submit statements and supporting materials for the record, without objection.

I want to thank you all again. This hearing is now adjourned.

[Whereupon, at 12:02 p.m., the Subcommittee was adjourned.]

A P P E N D I X**STATEMENT OF ANGELA B. STYLES****TESTIFYING ON BEHALF OF THE DEFENSE INDUSTRY
INITIATIVE ON BUSINESS ETHICS AND CONDUCT****BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE****DECEMBER 9, 2015**

CHAIRMAN HANNA, CONGRESSMAN TAKAI, AND MEMBERS OF THE SUBCOMMITTEE, I appreciate the opportunity to appear before you today as the Coordinator of the Defense Industry Initiative on Business Ethics and Conduct (“DII”) to discuss ways to empower small businesses to comply with the multitude of requirements they are required to follow as contractors in the federal marketplace.

DII is a nonpartisan, non-profit 501(c)(3) association of U.S. defense companies who are committed to a culture and practice of ethics and integrity in all business dealings with the United States Department of Defense. In 1986, the Chief Executive Officers and senior officials of 18 defense contractors (please see Attachment A for a list of founding Signatories) led by Jack Welch from General Electric voluntarily met to create DII and draft self-governance principles. Mr. Welch and the other pioneering defense contractors were guided by the “The President’s Blue Ribbon Commission on Defense Management” for defense contractors to improve the defense acquisition process through greater self-governance. By July 1986, 32 major defense contractors had pledged to adopt DII’s core principles. Today, 76 defense contractors—including both small and large businesses—are Signatories to the DII principles (see current list of DII Signatories at Attachment B):

We, the members of the Defense Industry Initiative on Business Ethics & Conduct (DII), affirm our commitment to uphold the highest ethical standards in all our business dealings with the government, as expressed through the following principles:

(1) We shall act honestly in all business dealings with the U.S. government, protect taxpayer resources, and provide high-quality products and services for the men and women of the U.S. Armed Forces.

(2) We shall promote the highest ethical values as expressed in our written codes of business conduct, nurture an ethical culture through communications, training, and other means, and comply with and honor all governing laws and regulations.

(3) We shall establish and sustain effective business ethics and compliance programs that reflect our commitment to self-governance, and shall encourage employees to report suspected misconduct, forbid retaliation for such reporting, and ensure the existence of a process for mandatory and voluntary disclosures of violations of relevant laws and regulations.

(4) We shall share best practices with respect to business ethics and compliance, and participate in the annual DII Best Practices Forum.

(5) We shall be accountable to the public, through regular sharing and reporting of Signatory activities in public fora, including www.dii.org. These reports will describe members' efforts to build and sustain a strong culture of business ethics and compliance.

As part of its mission, DII provides resources and assistance to help train hundreds of thousands of defense-industry employees in ethics and compliance, with DII's website providing free access to ethics training, instructional videos, and webinars on emerging ethics issues for defense-industry companies. DII also holds regular meetings and conferences to share best practices. As well, DII mentors suppliers and new firms in how to comply with the laws and regulations that govern U.S. defense companies.

Small Businesses in the Federal Marketplace Lack Resources to Develop Compliance Programs

In an ideal world, all businesses that participate in the federal marketplace would have the wherewithal to understand and comply with all of the obligations that go hand-in-hand with federal contracting. This is not an ideal world. The scope and complexity of regulations faced by contractors are enough to regularly challenge even the largest federal contractors with robust compliance and ethics programs.

With less resources (measured both by money and manpower) and less experience with government contracting, the hurdles faced by small businesses in even setting up compliance programs are monumental. As a result, the federal government is undoubtedly contracting with small businesses that do not know the full extent of the laws, regulations, or provisions with which they are supposed to comply (let alone understand them), are not monitoring their compliance against these requirements, and have no process to voluntarily disclose violations to the appropriate authorities.

Although there are numerous federal government agencies, centers, and offices that work with small businesses engaged in federal contracting, DII has *extensively* searched and has not found government sources that provide guidance to small businesses to aid in the adoption of codes of conduct or the establishment of broader compliance and ethics programs. Some offices, like small business development centers, which are administered by the Small Business Administration, provide management assistance to current and prospective small business owners, but have been statutorily

tasked only in general terms with providing counseling and technology development for complying with environmental, energy, health, safety, and other federal, state, and local regulations. 15 U.S.C. § 648(c)(3)(H).¹ The statutes underlying other similar programs, like the Procurement Technical Assistance Centers and the Department of Defense “DoD” Office of Small Disadvantaged Business Utilization (also known as the DoD Office of Small Business Programs), do not speak to helping ensure small business compliance with laws at a high-level like this, let alone the establishment of ethics and compliance programs.

DII’s Past and Current Outreach to Small Businesses

Because federal resources for assisting small business with ethics and compliance programing appears to be woefully lacking, DII recently undertook several significant initiatives to provide ethics and compliance resources to small business contractors. In 2014, DII published a Model Code of Conduct for suppliers, which I have provided to the Subcommittee as Attachment C. DII learned from a 2013 survey of its Signatories that such a code would be a helpful resource when dealing with supply chain integrity issues. DII’s Model Code of Conduct includes such topics as compliance with laws, human rights, employment practices, anti-corruption, conflicts of interest, and information protection. For those already with a supplier code, this Code is a benchmarking tool. For Signatories as well as small suppliers without a code of conduct, the Code is capable of being adopted for use as-is or as a foundation to the creation of a new supplier code of conduct. Ideally, this Code will come to serve as common core code with company specific addenda and achieve the ultimate objective of limiting the number of codes flowed to common suppliers.

DII also undertook in 2014 to provide a Supplier Toolkit. The Toolkit’s purpose is to provide helpful tips and guidance on how to put together an effective ethics and compliance program, support suppliers in becoming compliant with Federal Acquisition Regulation 52.203–13 Contractor Code of Business Ethics and Conduct requirements, engage the supplier community in the ethics discussion, and strengthen the defense industry. The Supplier Toolkit can be found on our website at www.dii.org.

Following the publication of DII’s Model Code of Conduct and Supplier Toolkit, multiple suspension and debarment offices from agencies across the federal government invited DII to discuss difficulties faced by small businesses in understanding and complying with their obligations as federal contractors. As a result of these meetings, DII has committed to provide additional resources specifically developed with small businesses in mind. To that ed, DII has recently published a webinar on small business issues on its

¹ The Small Business Act provides that “Services provided by small business development centers shall include, but shall not be limited to—(h) maintaining current information concerning Federal, State, and local regulations that affect small businesses and counsel small businesses on methods of compliance. Counseling and technology development shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations.” 15 U.S.C. § 648(c)(3).

website; I have also provided today as Attachment D to my testimony the slides for this webinar.

Finally this spring, DII plans to launch a robust Small Business Toolkit, which will touch upon the following four features of a compliance program:

- Structure and organization of a compliance program—DII will provide examples of various models that can be used in building a compliance program;
- Code of conduct, policies & procedures—DII will develop models of the types of policies that small businesses which contract with the government should consider implementing;
- Training and communications—DII will publish sample training videos and other communications;
- Monitoring and auditing—DII will provide templates for small businesses to use to monitor the effectiveness of their compliance programs.

DII is also developing a mentor-protégé program for ethics and compliance issues that will provide names of companies and individuals that small contractors can contact as a resource. DII is taking these steps in furtherance of its mission to help improve the defense acquisition process through greater self-governance and will be analyzing how best to conduct outreach to make these resources more broadly available to non-Signatory small businesses.

In Conclusion

Given the scarcity of federal government resources dedicated to helping small businesses establish ethics and compliance programs, DII has committed to creating and making available resources to help small businesses understand and comply with federal contracting requirements. We are certainly hopeful that these education and training efforts can be done in coordination with our Department of Defense and Small Business Administration colleagues. The small business advocates can play an important role in helping to ensure that small businesses have ethics and compliance programs and provide guidance on the resources available to develop them. Together, the public and private sectors should ensure that small businesses have the resources and tools to wisely, legally and ethically perform contracts for the federal government. This concludes my prepared remarks. I am happy to answer any questions you may have.

 **Defense Industry Initiative**
ON BUSINESS ETHICS AND CONDUCTORIGINAL SIGNATORIES (1986)

Aeronca Inc.
Allied-Signal, Inc.
American Telephone & Telegraph Co.
Burroughs Corporation
E-Systems, Inc.
Eaton Corporation
FMC Corporation
Ford Aerospace & Communications Corp.
General Dynamics Corporation
General Electric Company
Goodyear Aerospace Corporation
Grumman Corporation
Hercules Inc.
Hewlett-Packard Company
Honeywell Inc.
Hughes Aircraft Company
IBM Corporation
Lockheed Corporation
Martin Marietta Corporation
McDonnell Douglas Corporation
Northrop Corporation
Parker Hannifan Corporation
PneumoAbex Corporation
Raytheon Company
Rockwell International Corporation
The Boeing Company
The Singer Company
Sperry Corporation
TRW, Inc.
Textron Inc.
United Technologies Corporation
Westinghouse Electric Corporation



DII Defense Industry Initiative
ON BUSINESS ETHICS AND CONDUCT

SIGNATORIES

3M Company	Humana Government Business, Inc.
ACC Health	Huntington Ingalls Industries
Advanced Electronics Company	IAP Worldwide Services
Aerojet Rocketdyne "A GenCorp Company"	IBM Corporation
Aerospace Corporation, The	Institute for Defense Analyses (IDA)
Agiltron	Intel Federal
AgustaWestland North America Inc.	Leidos
Allfast Fastening Systems, Inc.	Lockheed Martin Corporation
Alliant Techsystems, Inc.	ManTech International
Applied Research Associates, Inc.	MCR, LLC
AT&T Government Solution	Mission Essential Personnel
BAE Systems	MTS Systems Corporation
Boeing Company, The	Natel Engineering Company
Booz Allen Hamilton	North Florida Shipyards
BWX Technologies, Inc.	Northrop Grumman Corporation
CFM International	Orbital ATK
Chugach Alaska Corporation	Parker Hannifan Corporation
CNA Corporation	PGBA, A Celerian Group Company
Concurrent Technologies Corporation	Quantech Services, Inc.
Curtiss-Wright Corporation	Raytheon Company
Day & Zimmermann, Inc.	Rockwell Collins, Inc.
Decypher Technologies Ltd.	SAIC
Delex Systems, Inc.	SAP National Security Services, Inc.
DRS Technologies, Inc.	SENTEL Corporation
DynCorp International LLC	Serco Inc.
EADS North America	Siemens Government Services, Inc.
EG&G Technical	Sodexo Federal Services, Inc.
Elbit Systems of America	Solers, Inc.
Engility Corporation	SRA International, Inc.
Esterline Corporation	Supreme Group USA, LLC
Exelis Inc.	Teledyne Technologies Incorporated
Frequency Electronics, Inc.	Textron Inc.
General Dynamics Corporation	United Technologies Corporation
General Electric Company	URS Corporation
Georgia Tech Research Institute	Vectrus Corporation
Harris Corporation	Williams International
Health Net Federal Services, LLC	Wisconsin Physicians Serv. Ins. Corporation
Honeywell International, Inc.	Woodward, Inc.



Defense Industry Initiative
MODEL SUPPLIER CODE OF CONDUCT



The members of the Defense Industry Initiative on Business Ethics and Conduct (DII) (hereinafter "we") are committed to upholding the highest standards in all our business dealings with the U.S. Government, protecting taxpayer resources, and providing high-quality products and services for the men and women of the U.S. Armed Forces and their allies. Complying with all laws and regulations and ensuring fair competition are fundamental to this commitment.

This Supplier Code of Conduct expresses the expectations we hold for suppliers throughout the aerospace and defense industry.

General Disclaimer

This Supplier Code of Conduct is in no way intended to conflict with or modify the terms and conditions of any existing contract. In the event of a conflict, suppliers must first adhere to applicable laws and regulations, then the contract terms, followed by this Supplier Code of Conduct.

I. Compliance with Laws

We expect our suppliers to maintain full compliance with all laws and regulations applicable to their business. When conducting international business, or if their primary place of business is outside the United States, suppliers must comply with local laws and regulations.

A. Maintain Accurate Records

We expect suppliers to create accurate records, and not alter any record entry to conceal or misrepresent the underlying transaction represented by it. All records, regardless of format, made or received as evidence of a business transaction must fully and accurately represent the transaction or event being documented. When a record is no longer needed to conduct current business, records should still be retained based on the applicable retention requirements. Suppliers performing as US Government contractors (whether direct or indirect) must comply with the requirements in FAR 4.703. Suppliers that are performing or fulfilling a US Government role in their prescribed work must comply with the records requirements of the affected agency and any relevant National Archives and Records Administration (NARA) requirements that apply to that agency.

II. Human Rights

We expect our suppliers to treat people with respect and dignity, encourage diversity, remain receptive to diverse opinions, promote equal opportunity for all, and foster an inclusive and ethical culture.

A. Child Labor

We expect our suppliers to ensure that illegal child labor is not used in the performance of work. The term "child" refers to any person under the minimum legal age for employment where the work is performed.

B. Human Trafficking

Suppliers must adhere to regulations prohibiting human trafficking, and comply with all applicable local laws in the country or countries in which they operate. Suppliers must refrain from violating the rights of others and address any adverse human rights impacts of their operations. Suppliers must educate employees on prohibited trafficking activities, discipline employees found to have violated the law or rules, and notify the contracting

officer of violations and action taken against employees. Specifically, suppliers will be prohibited from the following in all contracts.

- Destroying, concealing, or confiscating identity or immigration documents;
- Using misleading or fraudulent tactics in recruiting;
- Charging employee recruitment fees or providing inadequate housing based on local standards, laws and directives;
- Failing to provide employment contracts and other documentation in the employee's native language;
- Failing to provide return transportation upon the end of employment for employees brought to the country for the purpose of working on a U.S. government contract or subcontract; and
- Failing to interview and protect employees suspected of being trafficking victims.

III. Employment Practices

A. Harassment

We expect our suppliers to ensure that their employees are afforded an employment environment that is free from physical, psychological, and verbal harassment, or other abusive conduct.

B. Non-discrimination

We expect our suppliers to provide equal employment opportunity to employees and applicants for employment, without regard to race, ethnicity, religion, color, sex, national origin, age, military veteran status, ancestry, sexual orientation, gender identity or expression, marital status, family structure, genetic information, or mental or physical disability, so long as the essential functions of the job can be competently performed with or without reasonable accommodation.

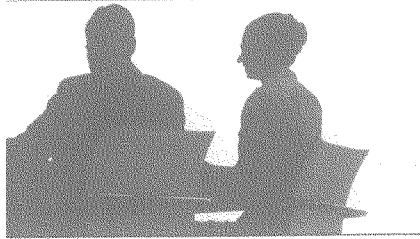
C. Substance Abuse

We expect our suppliers to maintain a workplace free from illegal use, possession, sale, or distribution of controlled substances.

IV. Anti-Corruption

A. Anti-Corruption Laws

Our suppliers must comply with the anti-corruption laws, directives and/or regulations that govern operations in the countries in which they do business, such as the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act.



We require our suppliers to refrain from offering or making any improper payments of money or anything of value to government officials, political parties, candidates for public office, or other persons. This includes a prohibition on facilitating payments intended to expedite or secure performance of a routine governmental action like obtaining a visa or customs clearance, even in locations where such activity may not violate local law. Personal safety payments are permitted where there is an imminent threat to health or safety.

We expect our suppliers to exert due diligence to prevent and detect corruption in all business arrangements, including partnerships, joint ventures, offset agreements, and the hiring of consultants.

B. Illegal Payments

Our suppliers must not offer any illegal payments to, or receive any illegal payments from, any customer, supplier, their agents, representatives or others. The receipt, payment, and/or promise of monies or anything of value, directly or indirectly, intended to exert undue influence or improper advantage is prohibited. This prohibition applies even in locations where such activity may not violate local law.

C. Anti-Trust

Our suppliers must not fix prices or rig bids with their competitors. They must not exchange current, recent, or future pricing information with competitors. Our suppliers must refrain from participating in a cartel.

D. Gifts/Business Courtesies

We expect our suppliers to compete on the merits of their products and services. The exchange of business courtesies may not be used to gain an unfair competitive advantage. In any business relationship, our suppliers must ensure that the offering or receipt of any gift or business courtesy is permitted by law and regulation, and that these exchanges do not violate the rules and standards of the recipient's organization, and are consistent with reasonable marketplace customs and practices.

E. Insider Trading

Our suppliers and their personnel must not use material, non-publicly disclosed information obtained in the course of their business relationship with us as the basis for trading or for enabling others to trade in the securities of our company or those of any other company.

V. Conflict of Interest

We expect our suppliers to avoid all conflicts of interest or situations giving the appearance of a potential conflict of interest in their dealings with our company. We expect our suppliers to provide notification to all affected parties in the event that an actual or potential conflict of interest arises. This includes a conflict between the interests of our company and personal interests or those of close relatives, friends or associates.

VI. Information Protection

A. Confidential/Proprietary Information

We expect our suppliers to properly handle sensitive information, including confidential, proprietary, and personal information. Information should not be used for any purpose (e.g., advertisement, publicity, and the like) other than the business purpose for which it was provided, unless there is prior authorization from the owner of the information.

B. Intellectual Property

We expect our suppliers to respect and comply with all the laws governing intellectual property rights assertions, including protection against disclosure, patents, copyrights, and trademarks.

C. Information Security

Suppliers must protect the confidential and proprietary information of others, including personal information, from unauthorized access, destruction, use, modification and disclosure, through appropriate physical and electronic security procedures. Suppliers must comply with all applicable data privacy laws. Suppliers shall assure extension of this requirement to all sub-tier sources they employ.

VII. Environment, Health, and Safety

We expect our suppliers to operate in a manner that actively manages risk, conserves natural resources, and protects the environment. We expect our suppliers to apply environmental management system principles in order to establish a systematic approach to the management of risks/hazards and opportunities associated with the environment, including potential risk from regulatory non-compliance, reputational loss, and opportunities for business growth through operational and product stewardship.

We expect our suppliers to comply with all applicable environmental, health and safety laws, regulations, and directives. Suppliers should protect the health, safety, and welfare of their people, visitors, and others who may be affected by their activities.

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VIII. Global Trade Compliance

A. Security

When applicable, suppliers are encouraged to implement practices and procedures to ensure the security of their supply chains in accordance with the Customs-Trade Partnership Against Terrorism initiative of the United States Department of Homeland Security.

B. Import

We expect our suppliers to ensure that their business practices are in accordance with all applicable laws, directives and regulations governing the import of parts, components, and technical data.

C. Export

We expect our suppliers to ensure that their business practices are in accordance with all applicable laws, directives and regulations governing the export of parts, components, and technical data.

D. Anti-Boycott

Our suppliers must not participate in, cooperate with, or further the cause of any unsanctioned foreign economic boycott, in accordance with the 1977 Export Administration Act and the 1976 Tax Reform Act.

E. Conflict Minerals

Suppliers must adhere to federal laws and regulations requiring reporting companies to make specialized disclosure and conduct due diligence concerning their use of conflict minerals that may have originated in the Democratic Republic of the Congo (DRC) or an adjoining country. Conflict minerals include cassiterite, columbite-tantalite, gold and wolframite, or their derivatives (tantalum, tin, and tungsten). Under the Securities Exchange Act of 1934, reporting companies that manufacture or contract to manufacture products that contain conflict minerals must conduct due diligence on the source and chain of custody of the applicable conflict minerals, and file a report with the SEC by May 31, 2014. We expect our suppliers to develop due diligence processes to meet our obligations to ensure that all products are responsibly manufactured.

IX. Quality

Suppliers must take due care to ensure their work product meets our company's quality standards. We expect our suppliers to have in place quality assurance processes to identify defects and implement corrective actions, and to facilitate the delivery of a product whose quality meets or exceeds the contract requirements.

A. Counterfeit Parts

We expect our suppliers to develop, implement, and maintain methods and processes appropriate to their products to minimize the risk of introducing counterfeit parts and materials into deliverable products. Effective processes should be in place to detect counterfeit parts and materials, provide notification to recipients of counterfeit product(s) when warranted, and exclude them from the delivered product.

X. Ethics Program Expectations

A. Whistleblower Protection

We expect our suppliers to provide their employees with avenues for raising legal or ethical issues or concerns without fear of retaliation. We expect our suppliers to take action to prevent, detect, and correct any retaliatory actions.

B. Consequences for Violating Code


In the event of a violation of any of the above expectations, we may pursue corrective action to remedy the situation. In the case of a violation of law or regulation, we may be required to report those violations to proper authorities. We reserve the right to terminate our relationship with any supplier under the terms of the existing procurement/purchasing contract.

C. Ethics Policies

Commensurate with the size and nature of their business, we expect our suppliers to have management systems in place to support compliance with laws, regulations, and the expectations related to or addressed expressly within this Supplier Code of Conduct. We encourage our suppliers to implement their own written code of conduct and to flow down the principles of a code of conduct to the entities that furnish them with goods and services.

For questions/comments about the Code, please visit the Defense Industry Initiative website: www.DII.org. Send an email by selecting "Contact Us" under the "About Us" section.

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ON BUSINESS ETHICS AND CONDUCT




Contracting with Small Businesses

Amy L. O'Sullivan
Olivia L. Lynch

Crowell & Moring LLP
October 2015

Purpose of Training

- Large pool of contracts/revenue set aside for small businesses
- Understand key SBA programs, requirements, and how contracting relationship can impact size status
- Focus on affiliation issues and limitations on subcontracting
- Large business participation in SBA programs or working with small businesses = TENSION
 - Opportunities
 - Limitations
 - Risks



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Agenda

- Overview of various SBA programs, penalties
- What is a small business?
- Affiliation issues
- Limitations on subcontracting
- 8(a) business development program
- Mentor protégé program and joint ventures

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SBA Origins and Mission

- The SBA was created to ensure that: “a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small-business enterprises. . . .” 15 U.S.C. § 631(a).
- It is the “continuing policy and responsibility of the Federal Government to use all practical means to take such actions as are necessary” to foster the economic interests, growth, development, and competitiveness of small businesses. 15 U.S.C. § 631a.

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SBA/Contracting Agency Interaction

- SBA negotiates annual procurement preference goals with each agency and reviews results
- SBA is responsible for ensuring that the statutory government-wide goals are met in the aggregate
 - SB = 23%
 - SDB = 5%
 - WOSB = 5%
 - HUBZone = 3%
 - SDVOSB = 3%
- Individual agency goals meet or exceed 23% goal
- MORE TENSION!

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SBA's Focus on Enforcement

False Certifications

- The Small Business Jobs and Credit Act of 2010 provides that an offeror's mere submission of a proposal for a small-business set-aside contract, or even its registration in a database to be considered for a set-aside, is to be considered an "**affirmative, willful and intentional**" certification that the offeror meets the small business size and status requirements
- Implemented in 13 C.F.R. § 121.108

Size Protests

- Low threshold to file, short time frame to respond and response includes significant documentation and certified SBA Form 355
- Parallel/subsequent OIG investigations, suspension/debarment

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Size Misrepresentation Penalties

- The Small Business Act and implementing regulations provide for severe penalties for misrepresenting small business size status:
 - Fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both
 - Subject to administrative penalties for Fraud
 - Suspension and debarment
 - Ineligibility to participate in any program or activity conducted by the SBA for up to 3 years
- May also be subject to:
 - Investigations
 - Civil or Criminal False Claims Act penalties

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Oversight and Enforcement – Risks for Large Businesses Too

- October 2011 Suspension of GTSI: the “Wake-Up Call” on Small Business Issues
- No prior warning – simultaneous with *Washington Post* headlines
- Suspension based on:
 - Adequate evidence of commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a contract or subcontract; and
 - Adequate evidence indicating lack of business integrity/honesty casting doubt on GTSI's responsibility
- Key issue was compliance with limitations on subcontracting:
 - Prime contractors had little to no involvement (0-.5%) in set-aside contracts
 - GTSI concealed the extent of its involvement as a subcontractor
 - Suspension lifted only after removal of CEO, GC, and others, and agreement to turn over internal business documents to government
 - Subsequent suspensions of GTSI small business prime contractors

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What is a Small Business?

- Size requirements vary by industry to reflect differences (generally either based on number of employees or annual receipts)
- SBA developed a table of size standards to match the North American Industry Classification System ("NAICS")
- NAICS code identified in the solicitation
- Offeror self-certifies in SAM it is small for the procurement
- SBA does not maintain a list of SBs
- Size status determined as of date contractor submits self-certification that it is small to the procuring agency as part of its initial offeror which includes price

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What is Affiliation?

- Size is based on employees/annual receipts of SB and its affiliates
- Generally, affiliation exists between entities when:
 - One controls or has power to control another or third party has power to control both
- A "totality of the circumstances" analysis
 - Ownership, management, previous relationships
 - Contractual relationships
- Affiliation may be:
 - Affirmative or negative control (*e.g.*, minority shareholder that can prevent quorum or otherwise block action by board or shareholders)
 - Direct or indirect (through a third party)

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How is Affiliation Determined?

- Several “stand-alone” tests, with certain exceptions
- “Totality of the circumstances” evidencing power to control
 - Case law provides guidance, but analysis is fact dependent
 - Focus on reality of control – substance over form
- Exceptions to affiliation coverage:
 - Most importantly, ANCs and mentor-protégé
 - Variety of other narrow exceptions

What Does “Affiliation” Mean?

- Affiliation affects a concern’s size for SB purposes
 - Eligibility for award of SB set-aside contracts/revenue – affects entire team!
 - Lost opportunities (prime and sub) and/or potential penalties if wrong
 - Possible subject of investigations, criminal sanctions
- This where SBA devotes heightened scrutiny – don’t try to walk the line!!
 - “[SBA] will not close its eyes to the practical realities of business life, but will look to substance rather than form in determining the size of a concern. . . . Although no single factor alone may support a finding of power to control, consideration of all . . . factors together [may lead] to that conclusion.” *Size Appeal of Savini Construction Co.*, SBA No. 477 (1971).

Affiliation Tests

- “Control” is construed broadly by the SBA and includes both affirmative and negative control
- Identity of interest
 - Business or economic interests
 - Family relationships
- Newly organized concern rule
- Ownership – several stand-alone tests
- Stock options, convertible securities, agreements to merge
- Common management
- Joint ventures (note key mentor-protégé exception)
- **Totality of the circumstances!!**

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Affiliation – Ostensible Subcontractor

- SBA looks at whether the large business subcontractor is really the prime
- Not just a percentage of the work determination – this is only one of many factors
- Frequent issue if incumbent prime has become large or incumbent large business sub wants new teaming relationship
- Requires some counter-intuitive proposal writing techniques
- More factors present, greater likelihood of affiliation
- **Mentor-protégé relationships avoid these concerns!!**

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Affiliation – Ostensible Subcontractor

- Evidence of unusual reliance on subcontractor:
 - Which party will manage the K?
 - Are there discrete tasks to be performed by each party or is there commingling of personnel?
 - What party performs the more complex and costly K functions?
 - Which party possesses the requisite background and experience to carry out the K?
 - What degree of collaboration was there on the bid or proposal preparation?
 - What is the amount of work performed by each party?
 - Which party chased the K?
- Other factors – incumbent team member; personnel transfer; lack of qualifications and/or experience; bonding or financial assistance
- More factors present, greater likelihood of affiliation

Limitations on Subcontracting

- In order to be awarded full or partial SB set-aside or 8(a) K, SB must agree:
 - Services K: SB will perform $\geq 50\%$ of cost of K incurred for personnel with its own employees
 - Includes direct labor costs and any overhead which has only direct labor as base, plus G&A rate multiplied by labor cost
 - Does not include supplies/materials
 - Supplies/Products K: SB will perform $\geq 50\%$ of cost of manufacturing supplies or products (not including cost of materials)
 - General Construction: At least 15% of the cost of the contract with its own employees (not including the cost of materials)
 - Specialty Trade Construction: At least 25% of the cost of the contract with its own employees (not including cost of materials)
- SBA-approved JVs must comply with same requirements
- Similar requirements for SDVOSB and HUBZone set asides

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Limitations on Subcontracting

- If Sub, understand how the limitations on subcontracting are calculated
- Focus on what does NOT count:
 - **Services:** 49% of the cost of the contract incurred for personnel; materials; supplies; overhead that does not have only direct labor as its base
 - **Supplies:** 49% of the cost of manufacturing the supplies; costs not incurred in production of the end item; materials, off-the-shelf items; required special tooling or test equipment
 - **Construction:** 84% of the cost of the contract, materials
 - **Specialty Trade Construction:** 74% of the cost of the contract, materials
- Also consider non-manufacturer rule, if applicable
- Must still consider other affiliation factors – “totality of the circumstances”

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Proposed Regulatory Changes – Limitations on Subcontracting

79 Fed. Reg. 77955 (12/29/14) Proposed SBA Regulation

- Complete overhaul of formula for calculating compliance with limitations on subcontracting – intended to be easier
- Shift from cost-based formula to comparison of amount paid to prime versus other than “similarly situated” subcontractors at any tier (defined as small business that is qualified the same as prime for the type of set aside)
- New compliance certification and harsh fine (greater than \$500K or amount exceeding limitation on subcontracting)
- Affiliation: Exclusion for “similarly situated” contractors in application of ostensible subcontractor rule

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Proposed Regulatory Changes – Limitations on Subcontracting

- Questions and Challenges
 - “Subcontractor” is undefined – i.e., does it include 1099’s?
 - Will the cost of materials exclusion in current regulations be carried forward?
 - Exclusion for similarly situated subs “at any tier” requires more oversight by prime
 - For ID/IQ contracts, does calculation apply at contract or order level?
 - When will final regulations be issued? For SBA regulations and FAR? What about the interim implementation in both SBA regulations and the FAR?

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8(a) Business Development Program

- 8(a) versus SDB Programs:
 - 8(a) Program offers broad scope of assistance to socially and economically disadvantaged firms, but SDB certification strictly pertains to benefits in Federal procurement
 - Companies which are 8(a) firms automatically qualify for SDB certification
- 8(a) application and certification process
- 8(a) participation is divided into 2 phases over 9 years:
 - 4-year developmental stage
 - 5-year transition stage
- Benefits = set-asides (sole source and competitive); mentoring; subcontracting opportunities; other assistance
- Survival post-graduation is difficult
- SDB status extends longer

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8(a) Program Eligibility

- Small business
- Unconditionally owned and controlled by 1 or more socially and economically disadvantaged individuals who are of good character and U.S. citizens
 - Socially disadvantaged: have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group. Social disadvantage must stem from circumstances beyond their control. Includes: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and others if meet test.
 - Economically disadvantaged: ability to compete in the free enterprise system impaired due to diminished capital and credit opportunities. Individual's net worth, after excluding the individual's equity in firm and primary residence, may not exceed \$250K at time of application and \$750K after that. SBA also considers individual's average 2-year income, fair market value of all assets, access to credit and capital, and financial condition of applicant firm.
- Must demonstrate potential for success (does not apply to SDBs)
- Key limits on ownership interests by non-disadvantaged individuals

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8(a) Program – Grounds for Contract Termination

- 8(a) contract (whether in base or option year) “must be terminated for the convenience of the Government” if :
 - Individual(s) on which 8(a) eligibility was based “relinquishes or enters into an agreement to relinquish” ownership or control of the 8(a) entity such that 8(a) entity would no longer be controlled or at least 51% owned by disadvantaged individuals; or
 - “The contract is transferred or novated for any reason to another firm”
- May be waived by SBA if meet limited exceptions
- **Important transactional consideration!**

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Important 8(a) Restrictions

- 8(a) entity may change its ownership or business structure so long as one or more disadvantaged individuals own and control it after the change, **AND** SBA approves the change in writing prior to the change
- Decision to deny request for change of ownership or business structure may be grounds for 8(a) program termination where change is made nevertheless
- Regulations do NOT provide that an 8(a) contract must be terminated if 8(a) entity is terminated from the program

SBA's 8(a) Mentor Protégé Program

- Unique advantages for mentor and protégé (and effective bid strategy) – currently limited to 8(a) program
- Special requirements
 - Qualifications of mentor and protégé
 - Numerous (some counterintuitive) requirements for terms of agreements
 - Various levels of SBA approval
- Must comply with performance of work restrictions (both between JV members and also limitations on subcontracting)

8(a) Mentor Protégé Program – Key Benefits

- SBA's M-P Program as affiliation exception for JVs; large business can have shared responsibilities as prime contractor
- JV qualifies as small and 8(a) on set-asides and for subcontracts (can be used to meet subcontracting goals)
- Ability to form multiple JVs to exceed regulatory limit of 3 awards in 2-year period
- Mentor can have up to 40% equity interest in Protégé
- Assistance provided under M-P agreement is exempt from affiliation
- Mentors generally limited to 1 Protégé; prohibited from more than 3; multiple Protégés cannot be competitors
- Protégé benefits from true mentorship, increase awards due to JV combined capabilities

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SBA v. Other Mentor Protégé Programs

- Only SBA program provides exemption from affiliation for M-P joint venture
- Other agency-specific M-P programs with varying benefits; only exempt from affiliation for assistance provided between Mentor and Protégé if M-P program authorized by statute or SBA
- Differing approval process, benefits, eligibility, and reporting under other programs
- Most designed to operate when Protégé is acting as subcontractor to Mentor (*i.e.*, DoD)
- Other types of benefits: subcontracting credit; reimbursement for costs of assistance; evaluation credit; awards and recognition

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Mentor Protégé Practice Pointers

- Types of assistance offered under M-P agreement should be broad (umbrella to avoid affiliation consideration) but not over commitment
- JV should be formed before submitting offer
- Operating Agreement – no transfer of membership interests; resignation, withdrawal, dissociation of member requires consent and SBA approval; carefully tailor termination provisions; members obligated to ensure performance of K and complete performance despite withdrawal of member
- Leave adequate time for SBA approval!

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Proposed Regulatory Changes – Expansion of Mentor-Protégé Program

80 Fed. Reg. 6618 (2/5/15) – Proposed SBA Regulation

- Significant expansion of 8(a) M-P program to all categories of small businesses
 - Concern for how SBA can process influx of applications, even with set open/closed periods
 - Annual review to determine if M-P agreement should be allowed to continue another year
 - Limit on duration proposed at 3 years and a total of 2 M-P agreements for protégé (either with same or different mentor)
 - Same affiliation exemption for JVs extended

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Proposed Regulatory Changes – Expansion of Mentor-Protégé Program

- Relationship Limitations
 - Generally no more than 1 protégé per mentor; max of 3 but no adverse impact on protégé development
 - Protégé cannot also be mentor
 - Generally no more than 1 mentor per protégé; may have 2 if not competing/conflicting
 - Delete current size restrictions for 8(a) protégé for consistency
 - Prohibit non-profits from qualifying as mentor
 - Need to choose counterpart wisely in light of limitations – are there more opportunities (set asides) with a specific category of SB?

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Proposed Regulatory Changes – Expansion of Mentor-Protégé Program

- Joint Ventures
 - JV must be reduced to written agreement
 - Does not require JV to be separate legal entity – but SBA questions whether all JVs formed under M-P agreements should be separate legal entities
 - JVs cannot be populated with individuals to perform awarded contracts (for tracking and ensuring protégé is benefitting)
 - New certification on compliance with JV regs and JV agreement at multiple points in time with sanctions
 - New requirement to allow SBA to track award to JVs but SBA requesting guidance on how (separate DUNS, SAM)

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Proposed Regulatory Changes – Expansion of Mentor-Protégé Program

- Questions and Challenges
 - Greater incentives and authorization for SB alliances (teaming and JVs) – fewer competitors and stronger teams on set-asides and full and open competitions
 - More JVs and teams increase confidence in agency set-aside determinations – contributing to increase in percentage of annual spending/awards to small business
 - Explosion of JVs fueled by M-P expansion, but likely reduction in 8(a) M-P relationships
 - Need to invest in development of M-P JV templates – we can help!
 - Further backlog and delays within SBA – more M-P agreements and JVs to approve and more size protests
 - Disappearance of non-DoD agency-level M-P Programs?

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Questions?

Amy L. O'Sullivan
(202) 624-2563
AOSullivan@crowell.com

Olivia L. Lynch
(202) 624-2654
OLynch@crowell.com

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**STATEMENT OF
DAVY LEGHORN, ASSISTANT DIRECTOR
NATIONAL VETERANS EMPLOYMENT AND EDUCATION
DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
OF THE COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
“SUPPORTING SUCCESS: EMPOWERING SMALL
BUSINESS ADVOCATES”**

December 9, 2015

Good morning Chairman Hanna, Ranking Member Velazquez and members of the subcommittee. On behalf of our National Commander, Dale Barnett, and over 2 million members of The American Legion, we thank you for this opportunity to testify at this hearing on the challenges facing veteran owned small businesses seeking federal contracts.

The American Legion identifies three issues that pose obstacles for veteran owned small businesses and service-disabled veterans seeking federal contracts:

- 1) The Federal Strategic Sourcing Initiative;
- 2) The Differences between Small Business Administration and Department of Veterans Affairs procurement policy standards; and
- 3) The abuse and lack of accountability in purchase card.

Federal Strategic Sourcing Initiative:

The American Legion has never thought that the Federal Strategic Sourcing Initiative (FSSI) was good for small business. While this initiative was crafted around assisting federal agencies meet their small business goals faster, it is flawed, in that it drastically reduces competition for government spending. To a certain extent, we've internalized that the current generation of FSSI is here to stay. So rather than fight it, perhaps it's time to see if we can work with this Committee to ensure that veterans small businesses can actually benefit.

Starting with the procurement process itself, it takes two years and thousands of man hours to successfully submit a responsive

proposal which does not guarantee an award. This expenditure of company resources will only position a firm as a potential prime under the FSSI. The process of just getting in position to bid is a huge gamble, overly burdensome and cost prohibitive to the majority of small businesses.

Another issue is that the agencies that committed to use this procurement vehicle prior to issuing the solicitation have failed to utilize the FSSI contract vehicle; therefore the few dozen small businesses that invested in the contract process have lost more money in comparison to firms that did not bother to bid and firms that bid, but did not receive awards. This is on account of the drastic measures a firm has to take to lower their prices in order to compete for an award, but after the award, not receiving the increase in volume the firm was promised prior to the bid.

Nearly two years ago, the General Services Administration (GSA) promised to buy an estimated \$20 million of their janitorial supplies through the FSSI. To the dismay of many small supply retailers that have positioned themselves to be primes under the FSSI, GSA has bought very little through their own FSSI contracting vehicle. Anecdotally, this is not an occurrence relegated to just the GSA and that this is happening within other agencies as well, because the agencies habitually use their preferred and trusted suppliers.

Procurement Center Representatives:

Procurement Center Representatives are supposed to be the small businesses' advocates, they ensure a fair proportion of purchases, contracts & subcontracts are allocated to small business. With SBA being underfunded, there are not enough Procurement Center Representatives (PCRs). In order to work expediently, they are not able to review every contract for compliance. Currently, PCRs do not review outgoing FSSI delivery orders with small business options already built in. However, the contracts that go out in the FSSI are so large that The American Legion believes that it will be to the small business community's advantage if PCRs are required to review outward-bound FSSI contracts.

The American Legion Recommends:

- 1) Making FSSI bidding process easier and shorter for small business.
- 2) Larger number of awards under FSSI.
- 3) Restrict FSSI to small businesses.
- 4) Increasing SBA budget for training and hiring more PCRs.
- 5) PCRs to start reviewing FSSI contracts.

Purchase Card Abuse:

The American Legion believes VA, when they tell us that the money spent on the purchase cards were used to provide adequate medical care and services to veterans. We don't question why VA spent the money, we are concerned with the problems that result from the way they decided to spend the money.

This issue is of the utmost importance to The American Legion as it directly effects the care of our most vulnerable constituents. Federal contracts protect veteran patients with terms and conditions; contracts also hold the supplier or healthcare administrator accountable for defective equipment and mal-practice. None of these protections are in place when medical equipment and services are purchased on the fly without contracts. So never mind the fact that VA is probably being overcharged, because no effort has been made to compete for best prices, or that the abuse of purchase cards is unfair to small business, this is foremost a safety issue that absolutely has to be addressed.

All purchases below the simplified acquisition threshold of \$150,000 but not below \$3500, are exclusively reserved for small businesses. VA's use of the purchase card for medical services and devices took away money that should have been considered for small businesses. Furthermore, VA's procurements made by the purchase cards were not factored into what was reported to the SBA for small business goal purposes. The percentage of the dollar amount that was reported set-aside for small business is flawed because an estimated \$6 billion per year was not reported in Federal Procurement Data System according to the Jan Frye's memorandum to Secretary McDonald.¹

In the past, VA mentioned that they needed additional contracting staff to write and oversee contracts. According to the Frye Memo, the Bronx VA Medical Center spent \$54 million on prosthetics paid with \$24,999 increments on the purchase cards. The American Legion believes that VA contracting officials rely on purchase cards as procurement shortcuts like they did in this instance because of short staffing and a high workload.

The American Legion also believes that purchase card abuse likely stems from bad training. Contracting personnel are trained and taught the same way, they know the small business rules and regulations. But anecdotally, when they get to the VAMCs, they are taught to take shortcuts because this is the way their supervisors have done it and their supervisors are sometimes unknowingly perpetuating an established culture of shortcuts. Which is why many employees who are abusing the purchase cards don't even know that they are breaking the law or realize that there might not be a need to get around regular contracting vehicles. Sometimes, the shortcuts created are not any faster than expediting purchases through VA's sole source authority under Title 38.

Further, The American Legion believes that VA is not the only party that keeps purchase card expenses off of Federal Procurement Data System (FPDS). We're confident other agencies are doing the same thing. A March 2008 GAO Report², lists several other agencies' cardholders who were bypassing Federal Acquisi-

¹ Jan Frye's memorandum to Robert McDonald, Secretary of the U.S. Department of Veteran Affairs, March 2015, accessed December 3, 2015, <http://files.ctcdn.com/8daee019001/1db6a9ca-27ae-4bcc-ab00-9ef060d9d2c2.pdf>

² U.S. Government Accountability Office, *Governmentwide Purchase Cards: Actions Needed to Strengthen Internal Controls to Reduce Fraudulent, Improper, and Abusive Purchases*, by Gregory D. Kutz, GAO-08-333. 2008

tion Regulations and making noncompetitive procurements with purchase cards.

There seems to be a recurring theme with the need for additional personnel to write, oversee and monitor contracts. Whether they are contracting specialists, contracting officers or PCRs, much of the problems our constituents have had with FSSI and purchase card abuse all stem from a lack of well-trained contracting employees. The contract bundling through FSSI, reverse auctions and large Indefinite Delivery, Indefinite Quantity contracts (IDIQs) were all aimed in part to alleviate the workload of contracting employees, but clearly it's not working because they are still looking for shortcuts and workarounds.

The American Legion Recommends:

- 1) Hiring more contracting staff.
- 2) Ensure that agencies must train and re-train contracting employees.
- 3) Agency must account for purchase card expenditures and start reporting it to FDPS.
- 4) GAO report on whether purchase card abuse is agency-wide and what is so onerous about small business rules that they seek shortcuts or why there is such an appeal for card-holders to make noncompetitive procurements with purchase cards.

Department of Veterans Affairs Verification:

Recently, the Center for Veterans Verification and Evaluation (CVE) has implemented a pilot verification process, which includes the assignment of a case manager to each case and provides counseling to the applicant prior to adjudication. The American Legion applauds VA efforts in engaging the applicant prior to the final adjudication. In 2013, The American Legion testified that there needs to be a human element in the pre-verification process to help an applicant understand why more documentation was warranted as opposed to just denying an application based off of insufficient evidence to establish ownership and/or control. In providing pre-adjudication emails regarding missing information and now incorporating counseling services to applicants, we see that VA has been responsive to our previous testimony.

Over the last two years, VA has made tremendous steps in improving the verification process. The American Legion would be remiss if we did not mention that CVE has significantly cut down the time it takes for a small business owner to receive an initial decision to less than 30 days. This is a stark contrast to 2012, when it took approximately 85 days for CVE to make a determination on an initial application.

However, there are several items left that CVE cannot address without legislative action and The American Legion believes that HR 3945, Improving Opportunities for Service-Disabled Veteran-Owned Small Businesses Act of 2015 introduced by Representative Mike Coffman, a veteran himself, would tie up the remaining loose ends with this program.

HR 3945 would align the definitions of VOSB and SDVOSB, ensuring that differences between the Small Business Act and the Vets First Program are consistent. Furthermore, this bill requires the VA to follow the Small Business Administration regulations when verifying size and control standards of an applicant's company. Last and most importantly, this bill creates an independent appeals process for SDVOSBs to challenge the agency's denials.

Aside from the fact that SBA's Office of Hearings and Appeals has the legal expertise in determining size and control, the intention of this move is to incentivize VA to improve their verification process in order to minimize the cases that are appealed. Under the proposed funding mechanism, VA would pay SBA by the case load; therefore, VA could potentially stop paying when VOSB and SDVOSB firms no longer have reasons to appeal.

The American Legion impresses upon the Committee that (1) including SBA in the appellate process would ensure more consistency in the final decisions being made and ensure impartiality in not having the agency of original adjudication review their previously denied claim and (2) the intention of moving appeals to SBA has nothing to do with an attempt to create a new preference group within the existing federal small business set-aside programs.

The American Legion believes that Rep. Coffman's bill addresses some of the shortcomings brought to light by GAO's November 2015 testimony before the Committee on Small Business' Subcommittee on Contracting and the Workforce and the Committee on Veterans' Affairs' Subcommittee on Oversight and Investigations.³

This bill addresses the three major concerns the veterans' community had regarding the verification process as outlined by our previous testimony in 2013. Compared to issues elsewhere in VA, CVE and the verification process has been a low hanging fruit for improvement. With this legislative change, this is an instance, when the stakeholders can potentially claim VA's improvements since 2013 as a marked victory.

American Legion Recommends:

Support for H.R. 3945 *Improving Opportunities for Service-Disabled Veteran-Owned Small Businesses Act of 2015* and establish the formal appeals process under SBA OHA.

Conclusion:

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million members of this organization. Questions concerning this testimony can be directed to Matthew J. Shuman, Assistant Director in The American Legion's Legislative Division at (202) 861-2700, or mshuman@legion.org

³U.S. Government Accountability Office, *Veteran-Owned Small Businesses: Preliminary Observations on Verification Program Progress and Challenges*, by William B. Shear GAO-16-179T, 2015. <http://www.gao.gov/assets/680/673511.pdf> (accessed December 3, 2015).

TESTIMONY FOR THE HOUSE SMALL BUSINESS COMMITTEE

“Supporting Success: Empowering Small Business Advocates”

Wednesday, December 9, 2015

ML Mackey, CEO & Co-Founder, Beacon Interactive Systems
Legislative Affairs & Policy Committee Chair, NDIA Small Business Division

Good morning Chairman Hanna, Ranking Member Velázquez and Members of the Subcommittee. My name is ML Mackey. I am the CEO of Beacon Interactive Systems, a Small Business with offices located in Waltham, MA and Norfolk, VA. I am also the Legislative Affairs & Policy Committee Chair for the Small Business Division of the National Defense Industrial Association, NDIA. With each of these roles, my motivation is the same; to utilize Small Business effectively to increase innovation, cost savings, and competition in the Federal acquisition ecosystem.

NDIA membership is composed of nearly 90,000 individuals and more than 1,600 companies, over half of which are Small Businesses. Beacon Interactive Systems is one of those Small Businesses. For the past 11 years Beacon has delivered innovative, cost effective, and highly competitive systems to improve the U.S. Navy’s situational awareness and operator performance.

Chairman Hanna, Ranking Member Takai, I appreciate your leadership and the efforts of your Subcommittee, taking the form of your obvious interest in and commitment to leveling the playing field for Small Businesses to compete in the Federal marketplace, and the many pieces of legislation you have authored and passed to that end. My role at NDIA places me in regular discussions of Small Business legislation. The overwhelming response of my colleagues to your efforts and your Committee’s efforts is sincere appreciation. So please let me begin by saying thank you.

As I said, this Subcommittee has demonstrated a deep commitment to leveling the playing field for Small Business. This concept is important to today’s discussion because if one accepts that Small Businesses have a lot to offer, and that in many cases Small Businesses are where innovation occurs, what we are all fighting for makes sense—this level playing field. Your efforts make it possible for the best—not just the biggest—to rise to the top.

The goal of your efforts is not to make it easy on Small Business—and it’s not—but rather to ensure that we have a diverse industry that supplies the government with the very best goods and services possible at the best possible price. Unfortunately, the level playing field is as difficult to create as it is important to maintain for the well-being of the government contracting ecosystem.

Fortunately for those of us that advocate for Small Business interests, we have strong advocates like this Committee. Your efforts in the recent legislation regarding Small Business Federal Contracting in the Fiscal Year 2016 National Defense Authorization

Act demonstrates once again that Small Businesses can depend on Congress to work for a fair and healthy acquisition system.

Of course, new legislation is just the beginning of the process. Each one of your provisions must be written into clear regulations and policies that each Agency can implement. Next, the Congress, the Small Business Administration, and each Agency must oversee the implementation of those regulations and policies to be sure they are being followed.

With that in mind, what I can offer today is some feedback from experience with my own company as well as some of my NDIA colleagues' experiences with their Small Businesses.

I make five recommendations in my prepared testimony, but the interest of time, I will read two of them today and submit the others for the record.

Lack of PCR involvement on Consolidated Contracts

Problem: Lack of PCR review on consolidated contracts limits Small Business participation.

Suggestion: Clarify that PCRs should actively advise on consolidated contracts. Inviting PCRs to advise on the consolidated acquisition strategy will help better identify those requirements where small businesses can best perform and help structure the solicitation such that more small businesses can compete. Over the recent decade, the federal government has seen widespread and far-reaching changes in the way it procures services and technology. There has been significant growth of consolidated contracts. Although this has helped the government cope with the reduction in the acquisition workforce through fewer contracts, it tends to bundle requirements that are out of reach of most small businesses. For example, technology contracts are generally the result of consolidating multiple disciplines and requirements into a single solicitation for large business team competition. Empowering PCRs to advise on consolidated contracts will help to ensure that the requirements are within the reach of small business.

Impact: Increased Small Business participation and competition resulting in more cost-effective and innovative solutions for our warfighters.

Post Award Compliance

Problem: The government has created barriers to entry into the Federal market and thus is not getting all the companies participating that it would like to have. Many entrepreneurial Small Business owners do not want to deal with the compliance, headache and *risk* of engaging with the Federal government. To be clear, Beacon became a Federal government contractor when, after ten years of running a successful private sector software company, and in the wake of the tech bubble burst, our market dried up. We engaged with the Navy SBIR's Program to accomplish this pivot into the Federal market. Once we got through the initial burden of understanding some of the Federal contracting compliance issues it has wound up being a net positive experience for both our com-

pany and our Federal customers. But overcoming the barriers was really hard at first. Honestly, it still is at times now.

Suggestion: Develop paths and provide resources for non-traditional, entrepreneurial Small Businesses to drive the innovation, cost-effectiveness, and improved competition so desperately needed in Federal procurement.

Impact: Increased Small Business participation and improved quality across the board; not just in the high quality of what these entrepreneurial Small Businesses will directly provide but also by the competition they will incite across the government supplier base.

Job Descriptions

Problem: Small Business advocates in government may not always understand the specific challenges that Small Business contractors are facing at any given time, and how to effectively advocate in the Agencies to overcome those challenges.

Suggestion: I would encourage the SBA and Small Business liaisons in the Agencies to continue to meet with Industry Associations like NDIA to get real world feedback about the current challenges and issues surrounding Small Business Federal Contracting. Solicit input from those of us in the trenches about how to best address these challenges. One of the things I find fascinating about my conversations at the NDIA Small Business Division meetings is the breadth of experience across our Small Business, Large Business and Government members. I find that outcome of these discussions usually quite practical as they are informed with more than one stakeholder perspective. But I would also offer this word of caution from my experience of managing employees: please legislate rather than regulate the content of the job descriptions—give SBA the parameters but let them fill in the details. While we should encourage a common understanding of the role and responsibilities of these Small Business Advocates in government, each advocate will do best when he or she is allowed to determine how best to specifically achieve a commonly understood set of objectives and goals. We need to create and protect a nimble and responsive SBA workforce.

Impact: Stakeholders in Federal Acquisition processes will more effectively cross-communicate to resolve challenges. This will increase both Small Business participation and the efficiency of Small Business contracting; something that can be a painful, long and drawn out process.

SBIR Transitions

Problem: Lack of understanding and low willingness to fully utilize SBIR authorities for Small Businesses during the acquisition process, especially due to concerns around legislated preference and sole source contract awards.

Suggestion: Train Procurement Center Representatives, PCRs, on the SBIR contracting provisions as well as Congressional intent of the SBIR Program, and create a system to refresh their knowl-

edge and remain current on any changes in legislation and regulation. Ensure that PCRs understand the capability and importance for using sole source contracts for follow-on work begun with SBIR investments. As Small Businesses that have won SBIR awards have already met a highly competitive threshold in the initial phases of the SBIR Program, PCRs should strongly encourage follow-on work, or closely related work, for the same Small Business that initiated the work. Train the PCRs to explain the relevant provisions of the FAR to Program Managers and Contracting Officers to reduce their fears and concerns over using the authority, which might seem risky but is really an innovative acquisition approach. Address the fact that follow-on work to the SBIR companies is not risky and actually meets congressional intent.

Impact: Increased Small business participation and insertion of cost-effective, competitively successful, innovative capabilities for our warfighters as well as increased ROI of Federal SBIR investments.

Lack of Regulatory Action

Problem: Some regulation has been slow in coming to implement new laws authored by this Committee. The uncertainty of what the rules actually guide the market to do can cause businesses to stagnate, hire and fire personnel in a haphazard fashion in anticipation of or reaction to unpredictable rule-makings, and can limit which companies will participate. While no business likes uncertainty, it is especially onerous for Small Businesses that typically do not have the deep pockets to hold up through uncertain market fluctuations.

Suggestion: Provide a level of resources to Agencies that can accommodate the writing of regulation at the same rate as new legislative changes are made. Congress must match the resources it provides to Agencies to the requirements it places on those Agencies.

Impact: A more stable, predictable business environment enables better planning and a more efficient, cost-effective federal acquisition ecosystem.

Mr. Chairman, on behalf of both the National Defense Industrial Association and myself, I hope that these suggestions will be useful in your ongoing work. I would like to thank you and the Committee for your leadership. We appreciate your efforts to increase the utilization of Small Business to drive innovation, cost savings and increased competition within Federal Procurement.

Thank you for your time and attention to these matters. And I would be pleased to respond to any of your questions.



FEDERAL STAFFING RESOURCES, LLC
Proudly Serving Our Nation and Its Heroes

Testimony of Tracy Balazs

On behalf of

Federal Staffing Resources, LLC

dba FSR

Submitted to the

**House Small Business Committee Subcommittee on
Contracting and Workforce**

“Supporting Success: Empowering Small Business Advocates”

December 09, 2015

Good Morning Chairman Hanna, Ranking Member Velazquez, and members of the Subcommittee on Contracting and Workforce of the Committee on Small Business. Thank you for this opportunity to provide testimony regarding my personal experiences as a woman-owned small business owner who has graduated from the SBA 8(a) program and is now an approved SBA Mentor.

My name is Tracy Balazs. I am the Founder, President and Chief Executive Officer of Federal Staffing Resources, LLC, also known as FSR. I am also a retired Registered Nurse. I am testifying today on behalf of FSR regarding the advocacy and support from the Small Business Representatives from the following departments in which I have had experience: 8(a) Business Development Program-Business Opportunity Specialists (BOS), the Procurement Center Representatives (PCRs), and the Office of Small and Disadvantaged Small Business Utilization (OSDBU).

As a member of US Pan Asian American Chamber of Commerce (USPAACC), an organization whose mission is to be the gateway to corporate and government contracts, while opening doors and making connections for Asian Americans, minority businesses and their partners on all levels, I am grateful for their recommendation that FSR should provide testimony today.

Federal Staffing Resources is a successful business with 250 employees due in large part to the programs, guidance, and support provided by the SBA.

FSR has been a federal contractor since its inception in February 2004. Our core competency has been in support of those who have sacrificed for our freedoms: the active duty men and women and veterans of the U.S. Armed Forces, by providing the best in class healthcare personnel and program management expertise to the Department of Defense and the Veterans Health Administration. We strongly believe that the SBA has given FSR the opportunity to provide these services to the best of our ability by giving us the support we needed.

The 8(a) program was crucial to our early survival as a business. Within the first 6 months of starting FSR, I engaged in extensive research on the SBA 8(a) program for government contractors. I immediately applied for this program and was granted certification through a waiver in October of that same year. My experiences have been extremely positive, and FSR has benefited greatly from the 8(a) certification. It has not been without challenges however, since the compliance requirements of 8(a) certified companies are rigorous.

The government contracting process is complex and confusing. Most small businesses do not have the time or the money it takes to fully understand how to succeed as a government contractor. The SBA provides essential guidance for business owners. To better understand the complexities of government contracting, resources available to those who seek them out. Hard work and focus is required of the leadership and their team. To be fortunate enough to have been a certified 8(a) company and to do work under the aegis of a federal agency, FSR recognizes that as a federal contractor and as a mentor to other small businesses, a duty is impressed upon

us to respect the terms of our contracts and adhere to their terms. This duty has required substantial time and investments on the part of leadership and its team to ensure such compliance. My relationship with by BOS when I was in the 8(a) program was based on trust that FSR could and would be able to do the work that we were granted through a sole source contract. The SBA acts a guarantor. They must approve the award and are essentially confirming that the contractor is capable of doing work as awarded. Our BOS was our greatest advocate during the 9 year certification term.

One issue that I encountered when I was working with the SBA is the interpretation and implementation of the standardized policies and procedures. They are handed down from Headquarters to the regional offices and in turn, to the local district offices, and finally, to the individual SBA representative. Even within the same office, but mostly across state lines and districts, interpretations of the policies may differ. I have had conflicting experiences regarding how the SBA reviews financial eligibility and size standards and how it applies these criteria to award or deny contracts. Some guidance are misleading, conflicting, or misinterpreted which can result in inappropriate actions, such as improper awards. Increased training for the representatives as well inviting industry to offer their experiences may help mitigate the confusion and ensure uniform compliance. Since the number SBA representatives is limited and the workload is increasing, the SBA has done an excellent job in updating their website. The website is much more robust than it was during the early years of my 8(a) term, and I use the site often as a resource.

Non-compliance and lack of attention to the rules may be potentially fatal for a small business. Even from the beginning, I knew that the relevant statutes and regulations must be respected and never ignored. We take compliance very seriously, so much so that FSR has a Director of Compliance. I have met many leaders of small organizations with a laissez-faire attitude regarding compliance. The choice to ignore can result in suspension or disbarment. Since the 8(a) program is highly regimented, certified 8(a) contractors are under greater scrutiny for compliance than any other small businesses that do not have a certifying body mandating an annual update of their business or financials. FSR is a Mentor in the 8(a) Mentor-Protégé program. Part of our duties is to educate our Protégé and make them aware of the pitfalls of non-compliance. We work with our Protégé-leadership and team to ensure that they understand the relevant statutes, as an example, the Service Contract Act, and regulations thereunder; know the available resources to answer their questions; and to be available for guidance.

The SBA helped us grow our business pipeline and our business network. The OSDBUs and PCRs were essential to creating opportunities over the past decade. The OSDBUs work closely with the SBA and small businesses to ensure that they are aware of the federal opportunities and know the governing statutes and regulations. As a small business, we make it a point to meet with as many OSDBUs as we can to let them know of our capabilities as a prime or a potential subcontractor. The PCRs work with the federal agencies and contracting officials in many areas. Two areas

that the PCR would have direct impact for small businesses is to make recommendations for small business set-asides and also to review the small business subcontracting plans and goals of large businesses for full and open requirements.

The monitoring of the small business subcontracting plans may merit review. The concern is that large businesses are not being fully assessed for compliance in their percentage of small business utilization as specified in their contract. I understand from speaking with both the OSDBUs and PCRs, that large businesses are expected to meet their small business subcontracting goals, however, due to insufficient number of government personnel, they are unable to “police” all of the plans. Therefore, these percentages are reported only by the large businesses without verification from the subcontractor small businesses. The government’s receiving the report of subcontracting revenue directly from the small businesses themselves may verify that this objective has been met.

In closing, I would like to acknowledge the SBA programs and their personnel for their assistance in helping me achieve business success and on behalf of thousands of other small business owners say—keep up the good work.

Chairman Hanna, Ranking member Velazquez, and members of the Subcommittee on Contracting and Workforce of the Committee on Small Business, thank you for asking for testimony from small businesses that currently work with the federal government. FSR appreciates that our contributions and personal experiences may impact the way the SBA interacts with small businesses, monitor and educate to ensure more compliance. As a minority women-owned small business, I have tremendous gratitude for the SBA’s support while I was in the 8(a) program. FSR would not have grown as quickly had we not been certified.

Thank you for you very much for this opportunity. I am available for any questions.

